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IN THIS NUMBER

FRANK BANE, who is returning to his position as executive director of the Council of State Governments after setting up the system of field operations for rationing and price control under the Office of Price Administration, writes of the principal problems of intergovernmental relations involved. His views on the subject are based on experience in municipal, state, and federal agencies. Before accepting his present position with the Council of State Governments, he was executive director of the Social Security Board.

The state representative on the San Francisco Bay Region Metropolitan Defense Council and its executive officer, SAMUEL C. MAY and ROBERT E. WARD, discuss the administrative problems encountered by that Council in coordinating the work of municipal and county agencies. MR. MAY is director of the Bureau of Public Administration at the University of California, and MR. WARD is a research assistant in the Bureau.

After changing from personnel work with the Social Security Board and the Home Owners' Loan Corporation to a position with the Division of Administrative Management in the Bureau of the Budget, ROWENA BELLOWS ROMMEL writes of the tendency of the present system to make specialists of those recruited for general administrative talent.

EDWIN E. WITTE, who has been an executive and consultant in state and federal agencies dealing with problems of taxation, social security, planning, and labor relations, and who was executive director of the Committee on Economic Security which sponsored the social security act, discusses the expanding role of administrative agencies and officials in the making of laws.

The administrative system through which federal agencies keep in touch with the enactments of state legislatures and propose legislation to them is described by ERNEST ENGELBERT and KENNETH WERNIMONT. Since this article was written, MR. ENGELBERT has gone into military service; MR. WERNIMONT is still with the Legislative Analysis Research Section of the Bureau of Agricultural Economics.

LOUIS L. JAFFE, University of Buffalo School of Law, analyzes the principal bills that have recently been presented for the reform of federal procedure in administrative adjudication and discusses the potential effect of the several approaches on private rights and departmental management.

Reviewers: ROBERT K. LAMB, staff director of the Tolan Committee of the House of Representatives, reviews its latest findings in the light of current problems of war production and community services. . . . JOHN M. GAUS comments on the posthumous papers of one of America's important contributors to the discussion of problems of public and private management. . . . The report of the national organization of public personnel administrators on the controversial problem of employee organization in the public service is reviewed by ARTHUR W. MACMAHON. . . . THOMAS H. REED writes on the latest study of the governments of metropolitan areas.

The pages of *Public Administration Review* are open to contributors holding various views of public policy and public administration. The editors do not accept responsibility for the views expressed in any article or review.

Cooperative Government in Wartime

By FRANK BANE

Director of Field Operations, Office of Price Administration

THE rationing of sugar was the first program by which the government of the United States undertook to administer day by day an aspect of the life of every American. It followed soon after the rationing of tires and automobiles and made use of the same administrative machinery, which will doubtless be developed to serve as the basis for the whole system of rationing and price control. Barring the catastrophe of sudden defeat or the miracle of sudden victory, this machinery will have to be used for an ever increasing range of functions within the next few years, for it is essential to the mobilization of our material resources.

This administrative machinery was set up and put in operation within three weeks. On December 7 the Japanese bombed Pearl Harbor; on December 11 the Office of Production Management froze the supplies of rubber in the United States and began to look about for a method of rationing them; on December 14 the Office of Price Administration undertook the job; and by January 5 the system was in full operation, with the forms and procedures in the hands of regularly constituted authorities in virtually every county in the United States.

The program was unprecedented in American history. It was absolutely necessary, and, moreover, its necessity was generally recognized. Therefore the country welcomed and demanded measures that in ordinary times never would have been considered. Rationing had to be done; it was not a political issue. For that reason, it was not only a great administrative problem, but it was virtually unmixed with any but administrative considerations. As a result, the rationing program exemplified an approach to the problem of public management that has been developing for at least three decades and that, in less conspicuous ways, has brought about administrative unity in many other programs in which two or more of the so-called "levels of government" have participated.

Growth of Cooperative Government

THIS approach, for want of a better name, we may call "cooperative government." Within the multifarious pattern of state constitutions and local institutions and charters, it has enabled the American people to accomplish national objectives without doing violence to local, state, and regional habits. Almost unnoticed even by students of government, it has enlisted state and local agencies in active cooperation toward common purposes and has made local self-government an essential part of national teamwork.

From one point of view, the rationing machinery was hurriedly improvised. In a more realistic sense, it was built on the foundation of established habits of cooperation and long-standing traditions of administration.

The first decade of this century was a period of muckraking and enthusiastic municipal reform, especially in the industrial metropolitan communities of the Northeast and Middlewest. Nobody paid much attention at that time to the efforts of the pioneer public health administrators

who were inaugurating the fight against hookworm in the southern states. Those pioneers could not rely on the expansion of municipal health departments for hookworm was a rural problem; and the diffuse structure of county government made full reliance on counties alone impossible. They accordingly furthered the establishment of county health officers who worked at first with private assistance and then under joint county and state supervisors.

At about the same time agricultural administrators, convinced that agricultural research and experimentation needed to be supplemented by active demonstration work in every locality, were developing the county agent. First employed with private funds and the encouragement of the Department of Agriculture to fight the boll weevil in the Deep South, the county agents came to be supported by local, state, and federal funds and to be supervised by county boards or local farm bureaus, state agricultural colleges, and the U. S. Department of Agriculture. Only after nearly a thousand county agents were actively at work did the federal government, through the Smith-Lever Act of 1914, put its relationship with them on a systematic basis.

During the 1920's the county agent was an ever present example of the possibility of collaboration among all levels of government and an ever present refutation of the myth that the levels of government had to move majestically in separate spheres. The example was a fruitful one. The '20's are popularly considered the zenith of laissez faire, but in many states they saw the development of county welfare and health systems under state direction and supervision.

In Virginia, for example, the former Board of Charities and Corrections, which had given only very general supervision to county institutions, was abolished in 1922 and replaced by a state Board of Welfare. It took over much of the direction not only of state institutions but also of county institutions for the care of indigents, delinquents, and defectives. Furthermore it supervised county programs of outdoor relief and parole while all these county programs remained under the management of responsible local officials. In Virginia the problem was not complicated by any overlapping of counties and major cities, since in that state alone the two types of local authorities have mutually exclusive areas.

In the early '30's came the emergency relief programs. The Federal Emergency Relief Administration subsidized state relief programs, and the states generally worked through county governments in order to have a simple system for covering their entire areas, even if the municipalities had superior administrative machinery. The principal cities themselves and the leaders in municipal administration joined in the demand that the counties become the basis for welfare administration.

With all their faults the counties had two advantages: they were generally about the right size for local administration, and they covered, with no overlapping, the entire area of the United States. These considerations prevailed even in some states where counties had hardly administered any functions at all. In New Hampshire, for example, Governor John G. Winant called on the Brookings Institution to survey the administration of relief within the state and recommend its reorganization. New Hampshire's local government, like that of other New England states, has traditionally been the township. But New Hampshire, with fewer than a half million inhabitants, had two hundred odd townships and only ten counties. For economy and effectiveness of operation, the county was virtually made over into an administrative unit and given the functions of relief and welfare—under state supervision and with federal assistance.

The social security program greatly extended the system of federal-state cooperation since, except for the phase of old-age and survivors' insurance, it was administered entirely through the states and their subdivisions.

Most recently, the Selective Service System established at the national level only a headquarters office to coordinate the state and territorial offices and to serve as a liaison between the War and Navy departments and the general public. It delegated to each governor the enforcement of the selective service program in his state and the selection of a state director of selective service. The local boards, in turn, were given virtually autonomous power and maintained direct contact with the prospective trainees and their families and employers.

Most of these programs were based on grants-in-aid, but the fiscal relationship was no more important than the administrative relationship with which it was intertwined. The habit of cooperation, even though made possible by federal funds, amounted to a great deal more than the federal government's purchase of compliance; it depended on the general recognition of the necessity of a program and a unified administrative approach toward its management.

Most of these programs, too, were in the broad field of social welfare. As the nation more generally recognized the fact that it had national economic and social problems arising from the national development of industry and technology and world-wide trade, it undertook to solve them by national programs, which could be administered best by administrative systems cutting across the traditional levels of government.

But only with the Axis attack on the United States did we undertake in earnest to manage our entire economy. Social security and welfare programs help those persons who fare badly in our industrial system, but rationing and price control and war production management are complementary measures to administer the system itself.

War production management necessarily deals first and foremost with industrial organizations, but price control and rationing affect people directly. Therefore when rationing was first undertaken, and as it has been extended, it was built on the cooperative system of government that has become so firmly established in America rather than on either exclusively federal machinery or voluntary commercial cooperation.

Because of the necessity of immediate operation and of dealing with the personal problems of every inhabitant of the United States, decentralization was more than a luxury or a means of encouraging local responsibility—it was a stark necessity. When the Office of Production Management decided to turn over the administration of its rationing powers to the Office of Price Administration on the grounds that the OPA had a field organization, the OPA faced several crucial questions of management policy. On its answers to these questions it has established the national system of rationing, which is now intended to serve also as the basis for the administration of price control.

The first of these questions was whether to set up a purely federal field force like, for example, that of the Work Projects Administration or whether to turn the job over to state and local governments. The decision on this point was unequivocal. As far as law was concerned, rationing was a federal power and had to be enforced by federal agents. But as far as administration was concerned, it was decided to make an absolute division of authority or function and to turn over to the states and localities complete responsibility for their portions of the work.

Under this plan, the federal government was to develop the general policy and program in order to lay down the rules of the game. The state government was to organize, to supervise, and to direct its administration. A local authority was to operate the program. The whole scheme was to depend on a complete and unqualified delegation of the necessary authority from the federal to the state level, and from the state to the local.

Organization in the States and Localities

LET us see how this system worked in the state governments and localities, first with respect to the tire and automobile ra-

tioning programs and then with respect to the sugar rationing program.

The whole approach depended on the existence in every state of a state defense council. These councils had been set up as auxiliaries to the governors in response to a request from the Division of State and Local Cooperation of the National Defense Advisory Commission in the summer of 1940, and in general they provided a system by which each governor could call on every department of the state government and on local authorities for participation in the war program.

On December 14, 1941, the OPA sent a telegram to every governor asking whether he and the state defense council would take full responsibility for organizing and directing the tire rationing program. Every state agreed to do so and to be ready to operate by January 5. Every state then appointed a rationing administrator who was accordingly designated by the OPA as a nonpaid federal agent.

The state furnished the necessary money, personnel, equipment, office space, and supplies. The state rationing administrator undertook to organize the local structure, designating municipal or county defense councils to be responsible for local operations. The quota for tires was assigned on a county basis, largely in proportion to the registration of commercial vehicles in each county, and therefore some local authority —either a defense council or a specially appointed county rationing administrator— had to be given authority to distribute the county quota among the local rationing boards.

The local boards of three members each were chosen by the local defense councils and their members, like the state and local rationing administrators, were appointed as unpaid federal agents on certification by the state rationing administrator. It then became the function of the local board to decide which persons should and should not receive tires in accordance with the national regulations.

The necessary field work for getting this structure set up uniformly was undertaken by some twenty volunteer and unpaid organizers on December 15. The organizers were brought together for a three-day conference (half of them in Washington, half in Chicago), and then each was assigned up to three states. In the meantime a regional organization under the OPA was being created, and the regional offices took over the supervision as soon as they were prepared.

In the first stage of operations the state and local offices went about their work with no financial assistance whatever from the OPA, except for the use of the penalty envelope and the necessary forms. Equipment and space were borrowed from existing agencies by the rationing administrators, and traveling was done in state cars. Personnel was borrowed from state and local agencies, volunteers were recruited from the volunteer participation bureaus of the Office of Civilian Defense and other sources, and a limited amount of clerical and stenographic assistance was secured from the WPA. The essential point, however, is that all these matters were the concern and responsibility of the state authorities; the OPA not only communicated with the state administrators alone, but it asked them to instruct the local authorities not to take any of their problems to Washington.

The state administrator was not confined to any single pattern in setting up his local rationing organization. Both because the quotas were assigned on a county basis and to cover all the area of the state, the state administrator usually chose the county as the basis of operations.

But the state administrator set up more than one board to a county where local conditions made it advisable, as is shown by the fact that in the early months of the rationing program some 7,500 boards were established, while there are only 3,052 counties in the United States. In many local areas the state administrator divided up the county quotas and let city or town authorities choose their rationing boards.

The state rationing administrator, for example, decided whether a single board should be set up in a city or a board in each precinct, or he let the city defense council make the decision; what he did, or what he decided, was approved by the OPA. The state administrator could appoint a county administrator and delegate to him the job of determining quotas for the subdivisions of the county, or he could do the job himself. In either case, the choice and the responsibility were his, and the OPA did not interfere. Generally, the state administrator let the local council decide or followed its advice, on local organization problems.

The only exceptions to the rule of state responsibility were the cities of New York and Chicago, in which metropolitan defense councils had been created to deal directly with the federal government.

In the next stage, the OPA undertook to furnish state and local boards with paid employees to supplement the efforts of volunteers, especially in anticipation of the greater volume of work to be required by the sugar rationing program. It allocated the available funds for personnel among the states roughly according to three criteria: population, the registration of commercial vehicles, and the number of tire rationing boards. The state administrator then allocated the state's share among local boards and administrators. Likewise, he distributed where necessary a reserve quota of about 8 per cent of the state quota to those counties containing unusual concentrations of eligible tire users as, for example, to the headquarters of a state highway department.

The object of the tire rationing program was to let tires go only to those who had to have them for purposes essential to public health and safety. The object of the sugar rationing program, on the other hand, was to allot sugar to everyone. The administrative structure and operations could follow the same principles but they had to be adjusted to take care of everyone at once. Furthermore, a system had to be devised without undue policing to permit everyone to get his share, and no one, whatever his wealth, to get more than his share.

The key to the new system for rationing sugar was the device of the ration stamp. Just as money makes possible the distribution of goods according to purchasing power with a minimum of inconvenience, so the ration stamp makes possible the allocation of their distribution according to need with a minimum of administrative supervision. The stamp simply flows along with money in the channels of commerce, passing from hand to hand with the exchange of goods. The dollar is the economic, the ration stamp the administrative symbol.

To make the stamp system operate effectively, it was necessary first to register everyone and give him his stamp book; and second to provide a system of exchange to keep stamps of small denominations from accumulating in too great quantities and to see that the rationed goods are not sold without the collection of stamps.

The first task was the most difficult. The solution adopted was to enlist the help of the educational system of the country, since every political subdivision had a public school system. First the OPA enlisted the help of the U. S. Office of Education, which approved the plan; second, each state rationing administrator worked in cooperation with the state commissioner of education; third, the county rationing administrator made arrangements with the schools in the county for the work of registering both individual and commercial users of sugar and designated a custodian to take charge of the ration books and the necessary forms.

The OPA sent tire rationing forms only to the state administrators and let them distribute the forms within their respective states. But hundreds of millions of forms had to be printed for the sugar rationing program, and it was physically impossible to split the distribution of them into these two stages. The OPA therefore consigned the forms and ration books to the county clerk of each county in the country; the county clerk turned them over to the custodian ap-

pointed by the county rationing administrator; and the custodian was responsible for distributing them to the schools at the proper time.

As New Hampshire had to set up a system of county administration in order to handle her welfare problem, other New England states had to set up a county system for rationing. Massachusetts, for example, has no county clerks, and arrangements were made for the books to be delivered to the state commissioner of education and to be distributed by the state police force to the county custodians.

State rationing administrators and commissioners of education gathered in Chicago on March 21 and 22, 1942, to make final plans for the registration for sugar rationing and to iron out unusual problems. A two-day period, April 28 and 29, was set for the registration of commercial sugar users who buy from brokers or wholesalers in the twenty-seven thousand high school buildings in the country and a four-day period, May 4-7, for the registration of individual users in the two hundred thousand grade schools.

The Chicago meeting made possible a more uniform interpretation of rules and regulations, which OPA officials were present to explain, or to adjust. It also gave state administrators an opportunity to tell of unusual administrative difficulties—in one county in Utah a schoolhouse is three hundred miles from the county seat, and the ration books had to be transported the last forty miles on horseback—but these problems remained the responsibility of the state and local administrators. The typical reaction was, "This is a hell of a problem, but you tell us it's our job to get the books out and we'll do it."

The system of exchange of stamps was the next problem. The consumer was to turn over to the grocer his stamp along with his money to get his sugar supply. The grocer was to pass on the stamps in exchange for the same quantities of sugar from the wholesaler, and so on to the refinery. And just as the customer's dimes may be exchanged for bills, so the stamps may be exchanged for large denomination certificates at the offices of the rationing administrators' 187 wholesale centers. The refinery must turn over to the OPA certificates accounting for the volume of sugar sold so that to a large degree the policing of the system is automatic.

As plans for the sugar rationing moved into their last stages, it became necessary to make available to the states limited funds for space, equipment, and communications, and to furnish paid stenographic and clerical personnel. The program was still to depend largely on volunteer or locally paid assistance, but funds were to be allocated to state administrators to use where absolutely necessary. Since the paid personnel, although under state or local supervision and control, was legally to be federal personnel, it was recruited through civil service channels.

In the management of any program it is necessary to choose between centralization and decentralization of operations. Each has its advantages and its evils. Decentralization leaves in the hands of local officials a great many decisions on which, in the eyes of a zealous central authority, they are bound to make frequent mistakes. The possibility of such mistakes is frightening to the central official, especially if he is by training and temperament more concerned with the subject matter of his program than with its management. He is accordingly tempted to institute a system of review of more and more decisions, and he hesitates to make a bold distinction between various types of problems in order to give to others the individual and particular cases, and control himself only the general aspects.

To yield to that temptation in the management of a national program is fatal. The old distinction between levels of government—reserving the programs most closely affecting the persons and property of citizens to the states and localities and entrusting the programs of national consequence to the central government—was a valid one in its time. The distinction cannot be made on

the basis of *programs* today, for modern technology, modern economics, and modern communications have made nearly every program of government a concern of federal, state, and local authorities alike. But within each program a distinction can be made as to type of administrative activity or function: for example, the federal authority can determine those matters of most general concern, the broad policies and regulations; the state can take responsibility for organization and supervision and direction; and the locality can operate the program with respect to individual cases. Thus the relationship of the individual to national policy will be in the hands of those who best know local circumstances and are best able to judge individual cases, while at the other extreme the national authority will be free to devote its entire attention to broad issues of policy.

This relatively new distinction is fundamental to the relatively new system of cooperative government. It has never been applied more thoroughly than in the rationing system, and it is significant that the rationing system was set up hurriedly to deal with two things, rubber and sugar. In the past it was a man's own affair how often he wore out his tires and how much he sweetened his coffee, but nothing is more essential than rubber and sugar in modern mechanized and chemical warfare. The federal government had no choice but to interfere drastically with the individual's habits of transportation and diet, but it did well to restrict itself to general considerations and leave personal cases to the states and their subdivisions. Indeed, since it wanted to get the job done well, it had little choice.

Collaboration of Federal Agencies

COOPERATIVE government usually involves not only collaboration among the so-called "levels of government" but among various departments and agencies of the federal government since in the modern world military, economic, and welfare programs are amazingly interdependent. The rationing program had unusually wide ramifications.

Rationing was undertaken under the authority granted to the President by the Vinson Priorities Act of 1941 and reaffirmed and expanded by the Second War Powers Act, 1942. The President first delegated this power to the Office of Production Management, which in turn transferred authority to the OPA to administer the tire rationing program.

The basic quantities of rubber, automobiles, and sugar to be available for civilian use were determined by the Office of Production Management and its successor, the War Production Board, in consultation with the War and Navy departments. The WPB retains the responsibility for making this determination, and the OPA then takes over the responsibility for rationing the available supply. In the sugar program, the WPB allocates supplies to those consumers who buy directly from the refineries after they register through the employment offices under the Social Security Board.

The OPA called on the Office of Education for help in arranging for the registration of everyone in the United States and the distribution of ration books through the school system of the country. In providing clerical assistance to state and local rationing administrators it called first on the WPA and next on the Civil Service Commission. The Indian Service took over the job of registering all Indians for the rationing program, and the inspectors of the Wage and Hour Division of the Department of Labor helped the regional inspectors of the OPA check on the tire rationing system. The regions of OPA were based on those of the Office for Emergency Management in order to facilitate cooperation with other emergency programs.

Within the OPA, the rationing program involved certain staff determinations that were prerequisite to actual operations. The staff divisions working with WPB had to determine first the products to be rationed; then the amount available for civilian use;

then the categories of individuals and services entitled to receive the products; and then the necessary rules and regulations.

To tighten up the relationships within OPA two important decisions were made in mid-April. First, on the theory that "field operations" could not be dissociated from other operations, it was decided to vest control in a director of operations, who would be in charge of the management and direction of the whole program, both in Washington and the field, but responsible to the Administrator. Second, it was decided to base the system of price control on the same type of cooperation with states and localities as the system of rationing.

As the administration of price control is added to the administration of rationing within the cooperative system, further federal financial aid will almost certainly be necessary. The state rationing administrators, originally chosen by the state defense councils and sworn in as federal officials without compensation, will become full-time, fully paid officials of the Office of Price Administration. At the same time, the volume of work will surely require the provision of more clerical personnel by the federal government.

The increase in federal contributions will, at a superficial glance, surely be taken to mean that the program has been "federalized" or fully nationalized in its controls. Of course it is impossible now to predict just what will be done with any program in the near future. But the benefits of decentralization and cooperative government can be retained as long as the local rationing boards or price administration boards are locally chosen, as long as the state administrators are designated by the states, and as long as the local and state administrators of the OPA are given substantial responsibility for the types of decisions and operations that so far have been entrusted to them. All of these conditions obtain under the present plans for the amalgamation of price control with rationing administration.

Perhaps this type of decentralization should be called "federalization" in a more accurate use of the term than that now current. The old theory of the federal system, based on a constitutional assignment of certain jobs to certain levels of government, has lost its reality under modern conditions. But a newer set of distinctions is possible. These distinctions must be administrative and must depend on an official and popular agreement to entrust considerable responsibility and authority in national programs to officials chosen by state and local governments. If maintained by common consent, they will constitute a new type of federalism that can be adapted readily to the changing demands of the modern world.

THOSE who interpret administrative developments in terms of a struggle for power among individuals or agencies or levels of government will find it difficult to understand the early history of America's first rationing program.

The agency that was made responsible for doing the job had no direct statutory authorization, but the necessary authority was delegated to it. The federal rationing agency got its program started without paid field employees and depended for its operations in the states and localities on volunteer personnel and contributions of office space and equipment. Its state administrators were chosen by another level of government, and its local officials were locally appointed. And the biggest single job that it undertook —the registration of the entire population— was done for it by the public schools, which many Americans usually consider not a part of "government" at all.

The organizing efforts of the OPA in the rationing program were devoted entirely to stimulating and freeing for action the energies of public officials over whom it had no power of compulsion. The program was undertaken not to restrict the distribution of commodities, for the necessities of war had done that, but to distribute most widely and equitably the supplies that were available for civilian use. The typical American

did not want to compete with others for limited supplies of commodities; he wanted a system that would give him his share and no more. It was a mistake ever to refer officially to the "hoarding" of sugar, for many housewives who wanted to return surplus stocks to the grocers as soon as they were assured of an equitable rationing system would not do so after that derogatory term was popularized.

The rationing program had unusual advantages. It was an obviously necessary program, supported by the popularity of the war effort. It was a concrete and definite job, which could be judged by relatively simple standards. Hence it raised no political issues and depended less on litigation or prosecution than on voluntary compliance. In short, it came as close as any large-scale program could to an example of administration undisturbed by political and legal factors.

Thus isolated, perhaps administration can best be described as the accepting of responsibility. But whatever it is called, the administration of the rationing program showed that, given a common purpose, the American people can extend their system of cooperative government to accomplish swiftly, efficiently, and without coercion any objective that modern society or total warfare requires.

Coordinating Defense Activities in a Metropolitan Region

By SAMUEL C. MAY and ROBERT E. WARD

San Francisco Bay Region Metropolitan Defense Council

THE geographical position and the tremendous natural resources of the United States have been major factors in shaping the attitudes of our people toward war. The broad stretch of the Atlantic Ocean, the even broader expanse of the Pacific, and the absence of any military threat from either north or south have resulted quite naturally in a widespread feeling of security from any attack which could not be overcome by our powerful navy. It is not surprising therefore that, with the exception of maintaining a mere skeleton military force which might be expanded rather leisurely to meet any international involvement, the American people have developed their domestic, economic, and political institutions without much consideration of their military implications.

When our country entered the first World War in 1917 there had been no previous governmental planning for mobilization of the industrial production of the mechanized instruments of modern warfare without which mere manpower lacks military significance. After a full year of confusion and improvising during which our allies were struggling against the common enemy, the federal government was able to create temporary wartime agencies that mobilized our raw materials and our human energies and skills into a huge military effort which was eventually overwhelming. Although these federal wartime agencies were abolished when the country went "back to normalcy," the experience of the first World War resulted in a considerable official recognition of the necessity for plans and programs to meet any future major war effort.

All this planning, however, dealt with federal agencies for the very obvious reason that the first World War did not involve state or local government, save incidentally through assistance and cooperation in programs which were operated by the federal government. A new factor in the present war has brought to state and local government very real responsibilities which were absent in 1917-18. The modern bomber has not only broken down the barriers of distance in conflicts between military forces but has made it possible to interfere seriously with the production of military equipment during an all-out war in which industrial supremacy, combined with efficient transportation, is the vital factor.

The organization of a military striking force and the provision of its weapons and supplies are properly the functions of the federal government. These two federal responsibilities are of paramount importance. The adjustments which must be made in the economic and social structure of the nation as we change from a normal peacetime program to the vital war program are primarily a federal responsibility, although many aspects of the problem involve a high degree of state and local cooperation.

The protection of civilian property and civilian life, however, except under martial

law within a battle area, has always been and still remains the legal responsibility of state and local rather than the federal government. The machinery for police and fire protection, as well as for most operations in health, welfare, education, and related activities, has been built and operated on the local level. Although there are varying degrees of state supervision and federal financial assistance to specific activities, generally these are local functions operated and staffed with local personnel.

The present war has forced upon the states and even more dramatically upon local governments, particularly in those areas which are likely targets for air attack or sabotage, a new responsibility which had never been given consideration in the normal establishment of the local laws, organizations, or machinery through which these governments were designed to operate. The problem becomes increasingly difficult in metropolitan areas. The boundary lines of most political subdivisions within the forty-eight states were established comparatively early in our history and persist regardless of environmental changes. There is general agreement among students of local government that in those areas which have become populous and metropolitan in character, the old governmental boundary lines are no longer properly adjusted to actual community problems. The San Francisco Bay Area presents difficulties characteristic of defense organizations in metropolitan areas. It is the purpose of this brief article to trace the development of machinery by which the nine counties around San Francisco Bay are attempting to meet those problems of civilian defense which confront the whole area.

Background

WHEN on August 2, 1940, the Division of State and Local Cooperation of the National Defense Advisory Commission addressed a memorandum to the governors of the forty-eight states suggesting the establishment of state councils of defense, California had already set up such an agency as an advisory body to the governor. It was comparatively easy to make minor adjustments to conform to the detailed pattern recommended in the memorandum. In June, 1941, the California State Council of Defense received legislative sanction and some financial support and became a legally established agency with advisory powers.

When, in accordance with the federal plan, the State Council set about stimulating the creation of properly constituted local defense councils, it was faced with a complex situation. By constitutional provision the cities of California have complete control over "municipal affairs" and are in no way responsible to state or county officials. The counties also have a high degree of local autonomy. Furthermore there is among California counties a great diversity in size, population, and character of development. For these reasons the law establishing the State Council of Defense provided: [1]

> Every county, city, and city and county may establish a local council of defense by ordinance duly enacted by its governing body. Local councils of defense, if and when established shall cooperate with and assist the State Council established by this act and its executive committee.
>
> One or more cities, one or more counties, or one or more counties and one or more cities may in accordance with the provisions of an act entitled "An act providing for the joint exercise of powers by counties, by municipalities or by municipalities and counties," approved May 20, 1921, establish one joint local council of defense to exercise the powers granted to each of the constituent cities or counties or counties and cities.

Also the Model County Defense Council Ordinance distributed by the State Council of Defense contained the following language:

> The defense council shall be composed of one representative of the board of supervisors, to be designated by the board of supervisors; the district attorney; the sheriff; (county engineer, county health officer, other appropriate county officers); and one representative from each of the incorporated cities within the county, to be nominated by the governing body of each such city and ap-

[1] California Laws 1941, ch. 561.

pointed by the board of supervisors. Such additional members as may be required to carry out the purpose of this ordinance, not exceeding _____ in number, may be appointed by the board of supervisors upon recommendation of the council as constituted above.

It shall be the duty and responsibility of the defense council to coordinate the activities within the county of governmental and private agencies, and of individuals, cooperating in the defense effort; to stimulate public interest and participation in defense activities; to consider and recommend to appropriate governmental authorities plans for the public safety, health and welfare; to plan a major disaster program, capable of functioning in a defense emergency; and to perform such other advisory functions as may be requested of it by officials of the city, county, State and Federal agencies engaged in the defense effort.

From this language it is apparent that councils of defense in California are advisory and planning agencies, that operations are the responsibility of duly constituted authorities, and that, as city and county defense councils began to develop their organizations, it was hoped that they would become cognizant of the need for cooperative effort in meeting problems which had significance for more than a single city or county.

The metropolitan areas of Los Angeles, San Diego, and San Francisco-Oakland contain approximately two-thirds of the population of the state, the most important harbors and naval establishments, and the bulk of California's war industry. All are military objectives under the conditions of modern warfare, and the fact that a particular concentration of population, military equipment and personnel, or vital war industries may overlap into several legally distinct governmental jurisdictions has small effect upon their vulnerability to enemy action. It does, however, hold important implications as to the protective measures to be adopted by the affected communities. The scope of their response to hostile threats must be commensurate with the extent of those threats.

Such a district constitutes a single target area with a common problem of defense and, for purposes of efficiency, it is desirable that all communities and jurisdictions within this district coordinate their protective measures. Such aspects of civilian defense as aircraft warning signals, evacuation routing and control, intercity and intercounty exchange of mutual aid, and coordinated control of civilian defense services demand elaborate forethought and planning. Integration or uniformity throughout the area is necessary in each of these instances. To achieve this, some organization must be set up to survey and solve the defense problems of the region as a whole.

Where state law cannot provide for a legally constituted and properly financed body with powers to decide policy, give orders, and administer defense activities, there still remain the alternatives of establishing either an advisory coordinating agency to work out a satisfactory plan of operations through agreements among officials or, failing in this, to provide plans and machinery whereby the military authorities could assume overhead control during an actual emergency and direct existing local personnel in previously arranged operations. Either of these alternatives presents difficulties. The division of authority among numerous governmental units or different levels of government with traditional rivalries and frictions would seem an almost insurmountable obstacle to the formation of a metropolitan area defense council. And even were such a council actually organized, it would still face as a functioning agency the difficulties of operating in behalf of an area which lacks any unified administrative or fiscal authority. Under these circumstances it would be forced to rely upon the amenability and cooperation of numerous jurisdictions and their readiness to take uniform legislative and administrative action upon the strange new problems presented by the civilian defense program.

These considerations were troubling the California State Council of Defense when on December 8, 1941, the federal government, through the Office of Civilian Defense, established metropolitan area defense councils

in a number of strategic places including the Los Angeles and San Francisco Bay areas in California. The nine counties of Alameda, Contra Costa, Marin, Napa, San Francisco, San Mateo, Santa Clara, Solano, and Sonoma, with an approximate present population of 1,900,000, border San Francisco Bay. Situated within these nine counties are sixty-six incorporated territories. Of these, seventeen are chartered cities enjoying an extremely large share of local autonomy, while all of the counties, under California's system of county home rule, have a liberal amount of independence. As a region, furthermore, the Bay Area lacks any unifying tradition of common planning or sustained cooperation for regional purposes. Numerous attempts during the past thirty years to secure metropolitan adjustments have with a few limited exceptions been unsuccessful. But Administrative Order No. 20 (OCD) came just after the attack on Pearl Harbor when local officials and the public were greatly concerned over the possibility of air-raid attacks. The first few regional blackouts revealed an amazing lack of uniformity throughout the San Francisco Bay Area, and it became apparent to the average man that the safety of his home as well as that of the important military or war production installations in his city was dependent upon the actions of the officials in a neighboring town or upon farmers in adjacent rural areas whose lights might outline a blacked-out town. There was almost immediate recognition that protection from rapidly flying bombers required an effort over as large an area as an attacking enemy pilot could see. When the average citizen and official came to realize that the rapidity and efficiency of blackout systems in the town next door, and indeed in every town in the area, might have a very immediate and appreciable effect upon his personal safety and that of his community, the foundation for a regional defense council was laid.

As time went on the need for uniformity or integration of other aspects of civilian defense upon a regional scale became more apparent. Officials and public alike began to realize that a totally new situation confronted them. Fire equipment and personnel, once considered adequate to any need, suddenly became completely inadequate before the threat presented by widespread incendiary bombing or by concerted arson throughout a city or area. Both lack of money and priorities made it impossible to obtain sufficient new equipment or personnel. Only one solution remained—regional mutual aid agreements in order to make the most efficient and general use of existing resources. The same situation prevailed in respect to law enforcement, health, and medical facilities. Furthermore, when the Army and the United States Office of Civilian Defense began to speak of evacuation, even though as a somewhat remote possibility, it was realized that, with the exception of interdistrict evacuation within a single city, this must be carried out in accordance with a general plan alloting as definitely as possible routes, times, transportation facilities, reception areas, and all their attendant installations and personnel to each community in the region.

Organization

ADMINISTRATIVE Order No. 20 of the United States Office of Civilian Defense, dated December 8, 1941, established the San Francisco Bay Metropolitan Civilian Defense Area. According to the text of the original order this unit was to comprise only the area described by the Bureau of the Census as the "Metropolitan District of San Francisco-Oakland," which included the entire city and county of San Francisco but only the more populous sections of Alameda, Contra Costa, Marin, San Mateo, Santa Clara, and Solano counties. This definition, excluding as it did the entire counties of Napa and Sonoma and sizeable portions of six others, was completely at variance with the local concept of the San Francisco Bay Region. Local opinion had usually placed within the region all of the nine counties washed by San Francisco Bay. In addition to

this discrepancy, it was immediately pointed out that the Census definition took small account of existing political boundaries and that, as a consequence, the area described by it in no sense afforded a practical political or operating basis. When this was explained to the regional office of the OCD and to the California State Council of Defense, permission was obtained to include all nine counties within the jurisdiction of the Metropolitan Defense Council.

Administrative Order No. 20 reads in part as follows:

> Under the authority conferred by Executive Order of the President, dated May 20, 1941, creating the Office of Civilian Defense and in accordance with the provisions of Paragraph 10, Administrative Order No. 2, of this office; the San Francisco Bay Metropolitan Civilian Defense Area is hereby created. . . .
>
> A Coordinator of Defense will be appointed by the U. S. Director of Civilian Defense. He will be subject to the policies and orders of the State Director in accordance with Administrative Order No. 2 of this Office. Accordingly, he will work under the direction of and make reports to the State Defense Council as set forth in Administrative Order No. 2.
>
> An Advisory Council of Defense including a representative from the State of California and the Chairman of the County Council of Defense of each of the above named counties, will advise and assist the Coordinator of the San Francisco Bay Metropolitan Civilian Defense Area. Where no county councils have been designated, the State Council of Defense may include in substitution therefor the equivalent number of municipalities that have local defense councils.

Following closely on the order, the director of OCD appointed the mayor of San Francisco as coordinator, and the governor of the state of California designated a member of the Executive Committee of the California State Council of Defense as its representative on the new Metropolitan Council. At the time these appointments were announced by the State Council of Defense, the advisory role of the Metropolitan Defense Council was made clear in the following terms:

> It should be understood that the sole purpose of the U. S. Office of Civilian Defense in creating this metropolitan defense coordinating agency was to provide effective machinery for coordination of defense activity in the metropolitan San Francisco Bay area. The agency is not administrative and it is not intended that it should exercise authority or control over the city or county defense councils in the region.

Administrative Order No. 20 requires one further qualification. Although it refers to a coordinator and an advisory council, in actual operation these elements are merged into a single working body of eleven men, including the deputy-coordinator appointed by the mayor of San Francisco, the State Council's representative, and the coordinators of the nine member counties.

From the beginning, membership upon the Metropolitan Council itself has been limited to county representatives. From an operating standpoint this has the advantage of assuring a small group of eleven members capable of fruitful discussion and decision rather than the unwieldy assemblage of at least sixty-six members which would be necessary were all cities in the region to be represented. Cities are indirectly represented in two ways, however. In the first place the county chairmen are present as the chiefs of their respective county councils of defense which are composed not only of county officials but also of representatives of every city defense council in their county. Secondly, the membership of two of the Metropolitan Council's most important committees, those on law enforcement and fire fighting, is largely composed of municipal officials. Through these channels the cities can always influence the actions of the Metropolitan Council, which, under any circumstances, is limited in practice to those actions which the cities are willing to approve and put into effect.

In addition to their positions as chairmen or coordinators of their county defense councils, the majority of the Metropolitan Council members also hold regular county positions. Three are sheriffs; two are district attorneys; and one is chairman of his county board of supervisors. Of the remaining three

members, one is a city manager devoting considerable time to county civilian defense duties, and both of the others left private life to serve full time in paid jobs as coordinators of civilian defense. This official capacity of the majority of its members has certain obvious advantages for the Metropolitan Defense Council. It adds to the prestige of the organization, provides many valuable contacts, permits the use of the established facilities of its members' offices, and insures a speedy and attentive reception for any programs which it may suggest.

In practice the Council itself acts as a policy determining and approving body. The details of programs are worked out by committees and subcommittees and are presented to the Council for its modification and approval. It meets frequently, usually at weekly intervals, rotating its place of meeting among the nine counties.

So far five committees have been set up—on law enforcement, fire fighting, health, evacuation, and transportation. As noted above, membership in the law enforcement and fire fighting committees is not limited to county representatives but includes a considerable number of municipal officials. The other committees, however, are composed of the nine county coordinators for the particular service concerned. It is the function of each of these committees to make surveys and prepare plans covering all matters in their field which require coordination on a regional scale, and then to present these plans to the Metropolitan Council for its approval. Each of these committees is headed by a regional chairman who, with a single exception, is not a regular member of the Metropolitan Council. Care was taken to select as regional chairman of each committee a man prominent and influential in the appropriate profession. The district attorney of Alameda County heads the law enforcement committee; the fire chief of Berkeley, the committee on fire fighting; and the county health officer of Sonoma County, the health committee. Capable private citizens so situated as to be able to give the required amount of time to their duties head the other two committees.

The Metropolitan Council has no finances as such, but the Bureau of Public Administration of the University of California has furnished one of its staff members who acts as a full-time executive officer for the Council. Office space is donated by the regional headquarters of the OCD located in San Francisco, and a great deal of the clerical assistance is furnished by the offices of the various committee chairmen, the mayor of the city of San Francisco, and his deputy coordinator. Plans are now under way, however, for the State Council of Defense to assume the financial responsibility for clerical help and supplies and the expense of the establishment and maintenance of a communication system between the control centers of the nine counties. The Metropolitan Control Center is described in a later part of this article.

Mutual Aid Contracts

IT HAS already been indicated that the absence of any official government agency with power to compel coordinated action beyond the boundaries of any single city or county makes it necessary to depend upon agreement between the responsible officials of the region. The chief activities of the Council, therefore, have been the negotiation of binding agreements on area defense problems.

The outstanding hazard is fire, possibly by incendiary bombs but more probably by sabotage. Concentrated in this region is an enormous assemblage of such vital war industries as shipbuilding, oil refineries, chemical plants, powder works, and arsenals; the most important dock facilities for overseas shipment; and large concentrations of military and naval equipment. But local fire departments have developed their organization and equipment during normal times for their own local protection with little regard for the needs of adjacent communities and assumed that many simultaneous fires within the area were improbable.

Prior to the outbreak of war a state-wide fire disaster plan had been established. This plan provided for the dispatch of state-owned equipment to districts where needed and for the voluntary exchange of locally owned fire fighting apparatus on a district basis. It was supplemented by the California mutual aid law of 1941, which permitted city fire and police departments to be sent beyond their boundaries in pursuance of agreements between the municipalities or counties concerned. But the "gentlemen's agreements" which developed under this law exempted the fire chief from furnishing equipment when in his judgment the local situation required its retention. The present all-out war, however, raises the new problem of incendiary bombs or organized sabotage by fire directed at both residential areas and military or industrial targets simultaneously. If under these conditions existing fire fighting equipment were retained within each city for its exclusive protection some vital military establishment, war industry, dock, or military concentration might not receive the amount and kind of equipment which would be needed to save it. Unless some agreement were made in advance, no fire chief could be expected to send his equipment away when homes within his own city were either endangered or actually burning.

As this problem was discussed it became apparent that if civilian authority failed to provide a plan whereby sufficient equipment and personnel could be rapidly and certainly mobilized to combat a fire in a vital war-related establishment, the military authorities would command neighboring communities to supply and man the necessary apparatus when the emergency made it seem essential to the war effort, regardless of fires in other areas. To meet this possibility some type of agreement binding all signatories to provide a stipulated amount of aid was necessary. Frequent meetings attended by mayors, fire chiefs, city managers, district and city authorities, and other interested officials resulted in the formulation of a contract which could be legally entered into by the governmental agencies within the region. This contract is well on its way toward formal acceptance, although it is probable that minor changes may be made before its final adoption. Each county representative on the Metropolitan Council is handling the negotiations within his own county, in accordance with the general policy and practice of the Council of dealing with the entire area through counties.

It was realized from the beginning that the legal difficulties of enforcing the provisions of a contract of this sort against recalcitrant cities or counties were probably insuperable. It was hoped, however, to achieve four major objectives by putting the agreement in the form of a contract which specifically stated the obligations and rights of signatories. In the first place, a public document of this nature could claim a greater measure of respect and, presumably, of observance than the alternative methods offered by a gentlemen's agreement or by resolutions of the several public agencies concerned. This contract had to be formally approved by legislative action on the part of its signatories, which put them under a public and moral obligation to implement the terms of the contract. In the second place, the very existence of this contract, signed by their councils and boards, had an excellent effect upon the attitude of the fire chiefs. As long as the dispatch of mutual aid equipment and personnel outside his territorial limits took place on the sole responsibility of the fire chief, the weight of any public criticism of that action which might subsequently develop rested solely upon his shoulders. Under these circumstances most fire chiefs would be inclined to think long and seriously before exposing themselves to possible public criticism. The contract changed all this, so that the fire chief in dispatching mutual aid will be performing a normal function of his office imposed upon him by action of his legal superiors. In the third place, the existence of such a contract demonstrates to the military authorities that vital installations throughout the region will

be effectively protected, and that, therefore, there is no need for them to assume direct control of local fire services. Finally, if the military authorities should find it necessary to take over, they would merely assume the over-all responsibility of putting into operation a plan already worked out in detail by those city officials who would be called upon to operate under army order.

It is generally recognized by the Council that in wartime the protection of vital industries and other facilities and installations of primary importance to the conduct of the war should have priority over less important facilities. It would be lamentable, if, as a result of the application of such a priority, large residential or other nonvital areas should burn down. But these can be reproduced and their loss means little in comparison to the national significance of the loss of an equivalent number of vital war facilities. An attempt is now being made, therefore, to induce the military authorities to supply to the regional fire coordinators, who will act as dispatchers of mutual aid equipment, a list of conflagration areas entitled to priority fire protection by virtue of their military or naval importance. Such a list, if obtained, will be held in the strictest confidence and released only to those regional dispatchers who must have such information in order to render efficiently the services and protection which the armed forces require of them.

Fire protection has been the chief concern of the Metropolitan Defense Council in its program of mutual aid, but similar contracts are now being considered for the exchange of law enforcement personnel, health and hospital facilities, and other services.

Regional Control Center

CONSIDERABLE thought has also been devoted by the Council to the auxiliary problem of a regional control center. These regional contracts, once negotiated, must be implemented by a regional information and dispatching center and by a regional communications system. Both the center and the communications system have actually been set up on a temporary basis. The center has been established as a part of the control center for San Francisco City and County. It is manned twenty-four hours a day by representatives of the fire, police, and health departments. Private phones have been installed for the use of the Metropolitan Defense Council and requests for mutual aid coming in from a county coordinator are relayed to the local control center of the proper regional coordinator, i.e., of fire, police, health, etc., by whom available mutual aid equipment and personnel will actually be dispatched. Tests of this system have been held and the difficulties which showed up have been largely overcome. It is anticipated that further facilities in the form of additional private phones, maps, and dispatch boards will be installed in the near future so that in time of emergency there will be constantly available in the Regional Control Center a general picture of the current situation in regard to incidents and available mutual aid equipment and personnel throughout the nine counties. An alternate regional control center has also been designated and set up in case the main center should be destroyed.

Other activities of the Metropolitan Defense Council have been numerous and the regional committees on evacuation, transportation, and health have been extremely diligent. Extensive surveys of facilities have been undertaken, tentative plans compiled on the basis of these, and considerable advance made toward the adoption of a regional plan in each of these fields. A very large measure of cooperation and uniformity has thus undoubtedly been introduced into the otherwise uncoordinated planning of nine counties and sixty-six cities.

THIS brief description of the organization and activities of the San Francisco Bay Region Metropolitan Defense Council would not be complete without some reference to the intangible contributions which this agency has made to the defense effort

in California. The weekly gathering of defense officials for discussion of their problems has developed a comparison of programs and practices which has compelled clearer thinking in regard to the objectives of civilian defense and the most suitable means for their achievement. A philosophy of civilian defense is evolving. No member of this Council still thinks of civilian defense as intended primarily for the protection of the individual's life or property but rather as the means of protecting the military effort and the war production. The Council is determined to do everything within its power to minimize any disruption which the enemy may cause. There will be no evacuation except under the immediate threat of an actual invasion. The citizen will be encouraged to "stay put" and keep the war effort rolling. The seriousness of our national situation has produced a cooperative spirit which would have seemed impossible under normal conditions. Officials whose interests were formerly confined to narrow local problems are rapidly gaining a recognition of the interrelationships of a vast metropolitan region. If this spirit can be maintained beyond the war period it promises a better planned and better administered metropolitan community.

The Making of Administrators

By ROWENA BELLOWS ROMMEL

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THE formation of the Committee on Administrative Personnel in the United States Civil Service Commission, whose principal job is to find competent personnel for higher level ($4,600–$8,000) administrative posts in war agencies, raises the question why the federal government finds itself so lacking in general, all-around, well-trained administrators.

Admittedly, the long history of specialized civil service examinations geared to supply experienced technicians has much to do with the present lack of administrative talent and experience. Admittedly, the general policy of promoting those who produced best in their specialized fields has brought good technicians and professional workers into administrative posts without aptitude, experience, or inclination for administrative work. In other words, the very essence of the classification scheme has weighted the scales in favor of the specialist and has contributed to the present dearth of administrative talent. But most of all this situation is a reflection of the general direction in which the whole employment market has moved in the last few decades, with the resultant molding of individual work histories, or "careers," to fit this pattern.

Specialization in knowledge or skill has been the means of making a living, and in general the greater the specialization the more success achieved. How many college graduates have entered the working world to find themselves floundering bewilderedly while locating an employer for their "educated" minds and for their supply of general knowledge about the world in which they live and its historical development! The transition to specialization generally takes place when they find small niches in which to shut out the horizons and start becoming proficient in limited techniques or processes.

Seven years ago I attended a conference at Harvard University on "Student Careers in the Federal Government." The high light of the conference was a discussion between Leonard D. White, then U.S. Civil Service Commissioner, and Tyler Dennett, recently resigned from a high administrative post in the State Department. Dennett was sarcastic, even bitter, on the subject of a career in the federal government. "Just get yourself a desk, a large one, and make sure that as many papers as possible have to pass over that desk for initialing. Get more papers, and more, passing over your desk. Make the procedures difficult and complicated, so no one can do the work easily except yourself, and when you are absent everything has to be held up for your return." White was presenting the thesis that there was opportunity for steady progress and a career in the federal service, that there was need for the intellectual training of college graduates who, with time and experience, might be a reservoir, though not the only one, to be tapped for much needed administrative ability.

Federal civil service recruitment was opened to the general college graduate and there seemed to be a ready market throughout the service for these persons. Each year since 1934 has seen a new influx of college graduates; the examinations have been mov-

ing away from the two "junior civil service examiner" examinations given in 1934 and 1936, for which only a college degree was required, steadily in the direction of requiring certain hours of credit in particular subject-matter fields. The aim of these examinations has been to supply the government with intelligent, well-educated persons potentially capable of becoming good administrators; persons entering by other examinations may of course have the same potentiality. Examinations have also been given at higher levels, with a broader base of experience requirements than formerly, which attempted to supply needed experience and talent in certain fields of administration, such as those for personnel supervisor, budget examiner, administrative analyst, and executive officer.

WHAT has happened to this potential administrative talent steadily inducted into the federal government in the last few years? Certainly these employees have not been able singlehandedly and stoutly to hew out in the subordinate grades exactly what they wanted to do; their supervisors and the top officials generally have had as large a share, and in most cases by far the largest share, in their development and the formulation of their work histories. Have the top officials in the federal service recognized the part they have been playing in the molding of the careers of individual subordinate employees and consequently in the work experience of the total federal manpower? Have supervisors and administrators taken cognizance of the need for training subordinates in general administration so that some of them would be ready to step into vacated or newly created high administrative posts of a general staff character or of an operating or program character? The answer lies in the work experiences of these individuals. What have these been?

I think the generalization will hold that the great majority, virtually all, of these "potential administrators" now find themselves well grooved in some special field, probably in personnel techniques and procedures or in some substantive research field, rather than in administration. Generally it was found that these persons could make a real contribution in whatever place they happened first to be assigned, and let it not be forgotten that most of them got assigned by telegrams from Washington which asked succinctly whether they could report two weeks hence in such and such agencies. If they were proficient, they were promoted, some fairly rapidly, and then they were too valuable in the spots they occupied to be moved about in order to acquire familiarity with other phases of administration. A good many of them could find recognition only by transferring at higher salaries (intermediate grades) to other agencies which needed their specialized knowledge and experience. The creation and staffing of so many new agencies during the 1930's accentuated this tendency. Hence resulted a still deeper vested interest on the part of the individual in the specialized technique which commanded such a ready market, and a personnel policy on the part of the agencies of "raiding" other agencies and departments for persons with specialized training and experience in federal procedures and practices.

Thus these employees have been getting experience in approaching problems from the base or from a corner of the triangle, while administration in the broad sense means approaching problems from the apex of the triangle—seeing a problem first and last with all its parts related to the major consideration at stake.

Take the example of a young man who recently became personnel director for a sizable agency. "Once you get above CAF-7, it is almost impossible to shift your field of work," he said to me shortly after taking office. This young man came into the federal service from the 1934 junior civil service examiner register and worked in six different agencies in his seven years in Washington, always in the field of personnel. He is likely to have an extremely difficult time some day

in finding a broader job to move into because his experience has been solely in one field.

WHAT is the best way to train an administrator? Certainly there is no hard and fast answer. First of all, the "prospect" must be one with suitable personal characteristics, ability, and honest-to-goodness liking for administrative work. Sensitivity and understanding of people, the how and why of their actions and interactions, must necessarily play a considerable part since administration means accomplishing objectives through the coordinated work of people. Those elusive traits of common sense and judgment play a large role. The difficulty of isolating these characteristics of common sense and judgment and of detecting growth in their application to administrative situations has undoubtedly contributed to the tardiness, often the absence, of recognition of development in administrative sensibility, ability, and responsibility.

Just teaching the potential administrator abstract principles of public administration will not guarantee the development of a good administrator. Burying him in numerous, ever present federal procedures won't do the trick. Sidetracking him in a busy operating job of a segment of an enormous program is not likely of itself to produce the desired result. Steeping him in the subject-matter, research side of a program may even dull whatever understanding of administration he initially had. Placing and leaving him too long among the apex generalities of the triangle, without any real contact with or understanding of what goes on down below, may permanently mar his ego and his future effectiveness. Even training him and utilizing his abilities in administrative analysis, which requires a genuine and acute understanding of administration, gives him a vicarious administrative experience—merely diagnosing what others are doing, never having the responsibility and difficulties of actually administering and carrying through to the end—through which he does not learn to understand the operating side.

I don't pretend to have the answer to this problem of securing administrative personnel for the higher levels of government. But some really serious thinking ought to be done as to *why* the federal government is so lacking at this time in experienced general administrators. For several years attention has been given to recruiting potential administrative talent, and with considerable success. The crux of the problem seems to lie, therefore, in the kind of individual development—not just in-service training or rapid promotion—which is resulting, and this is in large degree a reflection of the attitude of present supervisors and administrators. It hardly seems likely, either, that the present dearth of administrative personnel can be overcome by trying to turn officials, perhaps well versed in one or two phases of federal administration, into competent general administrators by a hit-and-run training course in higher level duties and responsibilities; this may be an emergency stopgap but it is not getting at the real root of the trouble.

The facts of employment and working experience in the last few years have in large measure been *against* the development of all-around administrative talent, and they may *still be against* producing administrators four or five years hence. The question of supplying administrative personnel is now being approached in terms of planning for a long emergency period and for the post-war period as well. The problem is one not only of finding the currently scarce administrators but also of developing and maintaining ways to fill future vacancies by stimulating the growth of potential administrators farther down the line.

An honest evaluation of what has happened in the last eight years or so would point the way for significant improvement. And this improvement must come about through conscious planning and action by top operating and administrative officials, not through boot-pulling exertions by individual employees or occasional flying tackles by training experts.

Administrative Agencies and Statute Lawmaking

By EDWIN E. WITTE

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THE role of administrative agencies in legislation has generally been discussed in terms of delegated legislation, the order-making powers vested in administrative departments. This is an important aspect of the relations between administration and legislation but by no means the entire relationship. The other part is the initiation within the administrative departments of bills considered and passed by the legislative bodies, and the influence which these departments exercise upon the action of the legislature.

The fine descriptions and interpretations which T. V. Smith has given us in recent years of "the legislative way of life" are something less than complete because they fail to assign sufficient importance to the activities of administrative departments in relation to statute lawmaking. The basic function of the legislature is seen by him to be the working out of an acceptable compromise between conflicting positions taken by different groups in our society on proposals for legislation originating outside the legislature, most commonly with private organizations. The function of administrative departments is chiefly to supply the legislature and the executive on their request with information they need for the efficient discharge of their duties in relation to legislation, and to initiate minor bills designed to correct defects which have shown up in the laws that these departments administer.

This description is very much an understatement of the role played by administrative departments in statute lawmaking today, particularly in the national government. Beyond question many important statutes enacted by Congress have their origin in administrative departments and congressional action is profoundly influenced by the wishes of these departments. To my personal knowledge this has been the situation as to substantially all social security legislation and also, I believe, as to most of the agricultural, banking, credit, defense, housing, insurance, public utility, securities, tax, and much other legislation of the last five or eight years.

As developed by Prof. O. Douglas Weeks in the only article dealing with this subject I have been able to find,[1] the present situation is not entirely new. Ever since Jackson's time there has been a close correspondence in the scope of many of the committees of Congress, particularly in the House, and the administrative departments of the government. McConachie, commenting upon this situation as long ago as 1898, said: "There is no suffrage for the administrative officer in a committee meeting, yet he has there the more important power which superior knowledge always gives."[2] In the middle twenties, Ex-Congressman Robert Luce, describing the functioning of Congress, said: "Probably more than half the business, measured by importance, comes directly or

[1] "Initiation of Legislation by Administrative Agencies," 9 *Brooklyn Law Review* 117-131 (1940).

[2] *Congressional Committees* (Crowell, 1898), p. 236.

indirectly from the Departments or Bureaus of the government." [1]

In the first years of the New Deal the administrators played a much smaller role in congressional lawmaking than in the preceding period of Republican rule. Much of the important early New Deal legislation was prepared by "braintrusters" brought in from outside the government. The Democrats, distrusting the officeholders, went so far as to create many new, independent agencies to administer the laws they passed rather than to vest their administration in any of the established departments. This preference is probably a phenomenon to be expected whenever there is a complete turnover in the control of the government.

Within a few years most of the imported "braintrusters" disappeared from Washington and the rest were absorbed in the departments. With acquaintance, Congressmen, department heads, and apparently the President gained confidence in civil service administrators. In consequence, their influence in legislation grew and reached an importance unique in the history of this country.

Initiation of Legislation

IN THIS recent period a very large percentage of all public bills acted on in Congress have originated in the administrative agencies of the government. By no means all of these bills came to Congress with the approval of the President or were labeled as Administration measures; a not inconsiderable number of them did not even have the endorsement of the administrative departments in which the persons who concocted these measures were employed. Very generally in the latter cases but few members of Congress have known anything about the connection of bureaus or departments of the government or their executives or employees with the initiation of the measures in question. Most commonly in such cases their introduction was an outgrowth of a personal relationship between the author and the introducer. In at least some instances, however, bills having such an origin have made their appearance in Congress as measures sponsored by national organizations, without the slightest suggestion that they came from administrative departments of the government.

A large part of the energies of many of the ablest persons in the administrative agencies of the government have gone into the consideration and preparation of legislative bills to be presented to Congress and, less frequently, the state legislatures. Countless conferences have been devoted to this subject and much of the research of many government agencies has been directed to this end. Even more than the top executives of the administrative departments, their subordinates a little lower down have concerned themselves with legislative proposals. Bitter battles have been fought within the bureaucracy over such prenatal legislative proposals, which have centered in gaining the support of the department heads and ultimately of the President for the position taken by a particular group.

Many of the important bills acted on by Congress were under consideration for many months and even years in administrative circles before they saw the light of day. Most commonly the initial (informal) drafts of these measures were developed within the bureaus or departments which later were charged with their administration. Commonly, however, other interested departments have also been drawn into the consideration of these measures before their introduction in Congress, sometimes only through informal conferences, often through more or less formalized interdepartmental committees. At times, bills originating in administrative departments have gone to Congress without complete agreement between interested departments, with the result that interdepartmental conferences on these measures proceeded simultaneously with congressional consideration and often have had quite as great an influ-

[1] *Congress: an Explanation* (Harvard University Press, 1926), p. 3-4.

ence on their final form as the congressional committees. Only seldom have departments disagreed publicly over legislative proposals, but behind the scenes there have been violent disagreements. These have been resolved through the processes of conference or by the decisions of higher officials in the administration, not a few of them by the President himself.

In addition to interested administrative departments, a considerable number of other organizations and individuals are usually consulted before legislative proposals originating within administrative circles are presented to Congress. Advance consultation with members of Congress is not widespread and is confined to the peculiar friends of the department in Congress and, at a later stage, to the chairman and perhaps other influential members of the congressional committee to which the measure will be referred. Some private individuals, not regular government employees but specialists in the subject matter, have quite often been brought in to give advice on important contemplated legislation and still more to try out on them the policy contemplated by bureaus or departments. Occasionally, also, advisory committees composed wholly or mainly of outsiders have been appointed to consider proposals for legislation, but this plan has been the exception rather than the rule. Where created, they have served primarily the purposes of publicity and of getting the reactions of peculiarly interested organizations and individuals.

Practice in relation to informal consultation with interested private organizations differs from department to department and, to a considerable extent, with the particular proposal which a department has under consideration. Some departments have such peculiarly close relations to particular interest groups that almost everything they propose by way of legislation is certain to be "cleared" with these groups; in fact, they are likely to be "in" at every stage of the departmental legislative proposals to such an extent that it is difficult for an outsider to determine whether the initiative came from the department or the private organization, or to decide which had the greater influence on the recommendations finally made to the Congress. This statement is true especially of departments which public opinion regards as the spokesmen for particular interests, such as the Veterans Administration and the Departments of Agriculture, Commerce, and Labor; but a much larger number of agencies have one and usually more organizations that they consult in advance on every important legislative proposal they offer. Still other organizations are consulted on particular bills or types of bills. Often such consultation occurs at a late stage of the development of departmental bills, but there is no general rule in this respect.

The basic purpose of the consultation is to avoid opposition to the measure when it comes before Congress. So it is that the organizations consulted are almost exclusively pressure groups, i.e., organizations representative of special rather than general interests and usually also organizations active politically and with a substantial membership. Organizations representing general interests, particularly small groups, and organizations certain to be opposed to the proposal are not consulted.

Departmental regulations regarding unauthorized publicity usually are effective in preventing any reliable information regarding contemplated legislative proposals from reaching the public until they are about ready to be presented to Congress. Advance information has most frequently appeared in the stories of Washington columnists. On some occasions such items seem to have been inspired by the proponents of new legislation as a method of trying out public opinion or of preparing it for the forthcoming proposals. But usually not until the congressional hearings does the general public get any chance to present its views.

The initiation of legislation in administrative departments is by no means the same thing as executive leadership in legislation. Most bills which the President recommends

to Congress originate in administrative departments. A considerable part of the importance of these departments in statute lawmaking today arises from the influence they exert upon the Chief Executive. As has been noted, much energy is devoted within administrative circles in trying to get the support of the President for the legislative proposals of the departments, often in competition with alternative suggestions also originating within the administration. But by no means all nor even a majority of such bills ever become a part of the legislative program of the President or get his endorsement in any form, although "cleared" with him, either personally or through the Bureau of the Budget.

Centralized clearance of proposals for legislation originating in administrative departments was first provided for in the Budget and Accounting Act of 1921, under which administrative departments were required to submit all proposals for legislation involving appropriations or finances to the Bureau of the Budget before presentation to Congress.[1] By executive orders issued principally between 1934 and 1937[2] this requirement has been expanded to include all recommendations or reports concerning proposed or pending legislation, other than private relief measures, to be presented to Congress or to any committee or member thereof. After such submission, the Bureau of the Budget advises the interested department of the relationship of its proposals or report "to the program of the President." Thereafter the department may do what it sees fit, but in any statement made regarding its proposals it must include the advice thus received from the Bureau of the Budget.

During the first years in which these requirements were in effect, the prescribed procedure was generally not followed in the case of the most important measures, but instead these were taken up directly with the President by department heads. Numerous less important measures were cleared in the same informal manner or not at all, although the number of proposed bills cleared regularly was fairly large.[3] What the situation in this respect has been more recently the author does not know firsthand, but information from individuals in the government service is to the effect that since the Bureau of the Budget has been attached to the Executive Office of the President and has set up a Division of Legislative Reference, there is much more general compliance with the clearance requirements.

The clearance of departmental bills through the Bureau of the Budget is largely a formal requirement. The main purpose of clearance is the negative one of preventing departments from sponsoring legislation which is out of line with "the program of the President." The real consideration of legislative proposals in administrative circles precedes, rather than follows, compliance with the formal clearance requirements. And not every bill which is "cleared" becomes an Administration bill or gets any support from the President.

Influence Upon the Action of Congress

THE role of administrators and administrative agencies in statute lawmaking is not confined to the preparation of bills introduced in Congress. Their influence is important also in the congressional consideration of these measures. Administrators are constantly appearing before congressional committees to give testimony in public hearings both on measures which originated in their departments and on other bills. Many of these appearances are at the specific re-

[1] The history of the development of central clearance of legislative proposals originating in administrative departments is related in the author's report on "The Preparation of Proposed Legislative Measures by Administrative Departments," President's Committee on Administrative Management, *Studies*, No. V, (1937) pp. 53-55.

[2] The basic order governing the clearance of legislation initiated in administrative departments now in effect is Budget Circular No. 344, dated Nov. 15, 1937, which was reaffirmed in Executive Order No. 8248, Sept. 10, 1939. Closely related is Budget Circular No. 346, dated Jan. 19, 1939, and amended June 20, 1940, relating to departmental advice to the President on enrolled bills and resolutions.

[3] Witte, *op. cit.*, pp. 55-57.

quest of congressional committees. Frequently, also, departments are asked to express their views in writing on bills pending before committees.

These public appearances and reports are by no means the only influence which administrators exert on congressional action. Many times administrators are invited to appear before congressional committees in executive sessions to give their opinions on contemplated amendments or some particular aspect of pending bills. In many committees it is customary for representatives of the administrative department principally interested in the legislation under consideration to attend all of the executive sessions in order to be able to answer questions and to state the views of their departments on subjects upon which any member may request information. Departmental representatives work with legislative draftsmen and committee clerks in preparing committee amendments, substitute bills, and reports. Commonly also the interested departments supply the committee chairmen and other members who champion their bills with material for their speeches, and their representatives are within beck and call to supply needed information during the course of the debate in the houses themselves.[1] Almost always representatives of the interested departments work and sit with conference committees in the final stages of important congressional enactments. While Congress has before it bills in which administrative departments are vitally interested, a large part of the time of bureau chiefs and other top executives, as well as of many employees lower down in the public service, is devoted to pending legislation. Sometimes there are as many meetings and conferences in administrative circles on the progress of pending legislation and amendments as there are sessions of congressional committees.

Buttonholing and more questionable forms of lobbying appear to be resorted to but seldom by representatives of administrative agencies and when employed are likely to lead to repercussions unfavorable to the legislation in question. On the other hand, departmental executives and employees constantly meet members of Congress and informally discuss with them pending bills in which the departments are interested, often at the initiative of the members and nearly always without intent of lobbying. Administrative agencies usually also have particular friends among members of Congress, who are consulted freely and utilized to keep track of what is happening on the inside. Sometimes also departments are instrumental in getting private organizations to take up the cudgels for the bills they originated, utilizing the voters back home to bring pressure upon members of Congress. In such cases, the departments try to keep secret their part in these campaigns, although they may be directing them. On the whole, however, the methods used by administrative departments to induce Congress to act favorably upon their proposals are much more aboveboard and free from objectionable features than those employed by private interests and by opponents of departmental bills.

The natural result of all of the activities of administrative agencies devoted to legislation is that they very greatly influence the action of Congress. The members of Congress are far from being rubber stamps in the process of legislation. The congressional committees to which bills are referred still have the largest influence upon the legislation enacted by Congress, but they do not initiate the measures they recommend and, normally, they give much weight to the wishes of the departments to whom the administration is entrusted and in which, very often, the proposals originated.

The influence of administrative departments in statute lawmaking does not end with the action of Congress upon legislative proposals. It has another inning when meas-

[1] In the Senate, departmental representatives are often on the floor during debates. In the House they are barred strictly from the floor but are in the galleries or in near-by rooms to be called for as needed.

ures passed by Congress reach the President. At this stage are included not only measures sponsored by these departments but all bills passed by Congress which affect them in any manner. The clearance orders now in effect make it the duty of the Division of Legislative Reference of the Bureau of the Budget to analyze the provisions of all enrolled bills at once after final action by Congress and to get reports and recommendations from all departments interested in the subject matter. The Director of the Budget is then to make recommendations to the President for approval or disapproval of these bills, taking into account the views expressed by the interested departments.

The total influence of administrative departments upon the President in the performance of his duties in relation to legislation is at most times even greater than upon the action of Congress. Normally the departments formulate much of the legislation which the President recommends to Congress. They prepare first drafts of his messages and speeches endorsing this legislation. They utilize him to bring pressure upon congressional leaders when measures in which they are interested and which he has endorsed are apparently stalled or in danger of being altered in respects which the interested departments do not like. Finally, they influence his action in relation to the approval or disapproval of all bills passed by Congress.

The reasons why the departments exert such very great influence in statute lawmaking are basically two: (1) the fact that administration is such a large part of present-day government; and (2) the superior knowledge which administrators have in their special fields. It is a commonplace but true observation that a large part of all legislation is concerned with the structure or functioning of administrative departments and the creation or modification of administrative powers. It is also true that the administrators have much to contribute which is of value in connection with legislation. Members of Congress who have served long on committees concerned with particular governmental problems often become real specialists in these fields, quite well able to hold their own with any one. On any particular measure, however, few members of Congress can become as expert as able civil servants who devote most of their lives to a narrow specialty.

Besides these two major reasons for the great influence of administrators in statute lawmaking, some other factors merit mention. As always, influence in this connection depends to a very large extent upon personal relationships. Members of Congress come to know and have confidence in the executives and specialists of the administrative departments; moreover, many times they are obligated for favors and are very conscious of the advisability of maintaining good relations with those departments.

Being a congressman or a senator is now a full-time job, requiring practically continuous attendance in Washington, except during political campaigns. The life of the members of Congress and that of their families is in the capital and the longer they remain the more this becomes true. Inevitably they meet many persons in the administrative departments, socially and otherwise. They like life in Washington and come to feel themselves a part of the community. They also come to think as does Washington, and Washington is predominantly composed of individuals who work in the administrative departments.

Probably on the whole less important, but in the aggregate very real, are considerations of a political character. A great many members of Congress, particularly those who serve on committees to which most of the bills in which a given department is interested are referred, have succeeded in finding places in these departments for friends and constituents.[1] I am satisfied that in most

[1] There is evidence that similar relationships are being developed with the major national private organizations in the fields in which departments operate. A considerable number of administrative departments have placed persons on their pay rolls whose appointment was particularly desired by the executives of these private

cases the pressure for such appointments comes from the members of Congress and arises from the fact that they are bedeviled by constituents for whom they must find jobs. Being politicians, members of Congress know that favors must be returned and that there are dividends in working closely with administrative departments. On the part of the departments there is an even more keen realization of the need of maintaining good relations with the members of committees who control appropriations or pass upon their legislative proposals. Such relationships go a long way in explaining the influence which administrators have come to exert in statute lawmaking.

The Situation in the States

THERE are great differences among the states with respect to the activities of administrative departments in relation to legislation. In all states a considerable number of bills introduced in the legislatures originate in administrative departments. The heads of these departments frequently appear before legislative committees to give their views on bills under consideration, including many measures with whose introduction these departments have had nothing to do. Probably more frequently than in the national government administrators buttonhole state legislators on pending measures and perform much like private lobbyists. Many state departments also have very close relations with private organizations and interests with which they cooperate in their legislative programs. In some states, for instance New York, administrative departments seem to play quite as important a role in statute lawmaking as in the national government. Viewed in its totality, however, their influence in statute lawmaking is much smaller in the states than in the national government.

The reasons for this situation are fairly clear. While the national government has been free from political turnover for nearly a decade, shifts between parties and factions have been exceedingly rapid in most states. In many if not most states, changes of governors have meant well-nigh a complete switch in all important departmental positions. In only a few states has anything like a career civil service developed. Under such circumstances state administrators have been afraid to do anything which might lead to criticism and everything they propose is discounted as being political. The state legislators also typically do not remain in office nearly as long as members of Congress. The legislative sessions are short and most of the members do not live at the capital. State legislation is quite as much concerned with administrative matters as is that of the national government, if not even more so. All other factors making for great influence in statute lawmaking on the part of administrative departments, however, if not entirely absent, are less powerful in most state governments. As a career civil service is developed in the state governments, the influence of administrators in statute lawmaking may be expected to grow as it has in the national government. Similarly, long terms of governors, legislators, and the heads of administrative departments are conducive to greater influence upon legislation by these departments. The existence of a genuine civil service system and longer periods of official service seem to be the major reasons why such influence is much greater in some than in most states.

A considerable part of the more important state legislation of recent years has come from administrative departments of the national government, directly or indirectly. Sometimes this trend has taken the form of model bills prepared in Washington or adaptations thereof. More commonly it has had its origin in the requirements of federal laws, in suggestion by federal agencies, or in assistance extended by their representatives in the preparation of bills or amendments offered in state legislatures. Much of the participation of administrative departments

organizations and whose principal function is to serve as liaison officers between the departments and these organizations.

of the national government in state legislation has been in fields in which federal financial aid is extended to the states. Some of it has resulted from leadership given by federal departments in particular fields of legislation, such as defense, the war on organized crime, and labor legislation. Where federal aid has been at stake, the state legislatures have complied with every suggestion, although grumblingly. In other cases the state legislature has adopted the suggestions of national agencies only when these proposals appealed to it, but there has been little resentment of federal leadership.

Significance

THESE developments have given the experts an influence in government heretofore unknown in this country. The public service has come into its own in legislation. Career public servants, specialists in their fields, along with academic social scientists serving government departments as consultants, have come to influence profoundly the legislative output of Congress.

Hence it follows that the functions of Congress can no longer be fully stated in terms of arriving at compromises between conflicting private interests. While apparently as yet little appreciated by the members of Congress themselves, their function has become, to a very considerable extent, passing judgment as the representatives of "the folks back home" upon the proposals of administrators. Congress, and to a lesser extent the state legislatures, are the medium in which a reconciliation must be effected between the points of view of the experts and the mass of citizens, quite as much as between the differing views of citizen groups.

Advantages and Disadvantages

THE primary purpose of this paper is to call attention to an important development rather than to appraise it critically. It will not be inappropriate, however, to set forth some of its advantages and disadvantages.

The great gain from the closer relations that have prevailed in recent years between the administrative and legislative branches of the national government has lain in the utilization to the full of the special knowledge of the experts. Beyond question the point of view of administrators and specialists merits consideration in statute lawmaking. They are persons of ability and good judgment, unusually disinterested and objective in their attitude and incorruptibly devoted to the public welfare. They have much to contribute to statute lawmaking, perhaps more than any other element in our society.

A considerable part of the credit for the forward-looking legislation of recent years clearly belongs to the individuals in administrative departments who initiated much of this legislation. It is probable that at all times governmental experts will have a better understanding of fundamental needs than the general public and their proposals will be progressive, in the best sense of that term.

Yet some disadvantages and dangers must be recognized. Foremost is the danger that too much weight will be given to the recommendations of the administrator and the specialist. The limitations of the expert have often been set forth.[1] He is likely to have a disproportionate view of values, grossly overrating the importance of his specialty. He lives in a narrow, sheltered world, pretty much out of touch with reality. He does not understand the point of view of people outside of the government, and, as Bagehot pointed out as long ago as 1867, is often contemptuous of public opinion.

To these limitations of experts as individuals are added considerations arising from the conditions under which they must do their work. As T. V. Smith and Richard L. Neuberger have brought out, one of the strongest features of our legislatures is the fact that all of the members are on a basis of equality, none of them owing their office to

[1] Among others by H. J. Laski, "The Limitations of the Expert," 162 *Harper's* 101-110 (1930); Sir Cecil Thomas Carr, *Concerning English Administrative Law* (Columbia University Press, 1941).

other members or having to answer to them for anything they may do. A very different situation prevails in the administrative departments. Within those departments there is a rigid hierarchy. Everybody is answerable to someone higher up and in many departments no greater offense can be committed than to try to by-pass an immediate superior. Despite civil service laws, there is also a pronounced tendency toward inbreeding in the selection of administrative personnel. The academic degree received, the college attended, and the economic views held all play their part in filling the more important positions in at least some of the administrative departments of the national government and in the selection of consultants and advisers. To this must be added the insistence of the unions of federal employees upon promotion from within, which further tends toward the development of patterns of thought and action peculiar to a closely knit bureaucracy—the sort of situation to which David E. Lilienthal has applied the picturesque phrase of "a kind of Phi Beta Kappa Tammany Hall." [1]

Suggestions for Improvements

DURING the war it is probable that administrative departments will devote less attention to statute lawmaking than in recent years. The reason is that congressional legislation in wartime will be less important than executive action. Administrative departments will prepare far more executive orders and fewer congressional bills, although many little heralded departmental measures will still be presented to Congress—some of them very important.

Assuming as I do that our democratic form of life will survive, statute lawmaking will again come into its own after the war. If it does, the role of the departments will be at least as important as it has been in the recent past. This is a safe prediction because, as J. M. Clark has said, "The logic of events is on the side of the expert; the job of governing a complex and technical economy cannot be done without his services." [2] If this conclusion be true, the advice that Clark gives is also sound: " . . . the answer is neither to get rid of the expert nor to surrender to him unconditionally but to devote some real effort to devising ways of keeping track of him. The methods of democracy must be adjusted to the job that has to be done, and this job now requires the expert."

Most important for gaining to the full the potential advantages of participation of administrative departments in the process of statute lawmaking while guarding against the dangers involved is to bring into the open the present-day role of these departments in this process. It needs to be recognized that administrative departments must interest themselves in statute lawmaking in this day and age. They should be encouraged to do so openly and aboveboard.

Research studies are badly needed to bring out all discoverable facts about the activities and influence of administrative departments in statute lawmaking. When the facts are better known, we are likely to have much more publicity about their current legislative activities. With the limelight of publicity turned upon these activities, there is much less danger of legislation which will be out of line with current needs and opinions.

Improvement of the functioning of administrative departments in relation to statute lawmaking will depend, in part, upon their policies. Their main objective should not be to get their bills through Congress or the state legislatures with the least expenditure of effort but to develop the best possible proposals and to give genuine assistance to legislatures in their consideration of these measures. In developing their proposals, they should realize that the departmental experts are not the fount of all wisdom and that public opinion needs to be given quite as much weight as technical perfection. To overcome the inevitable tendency toward

[1] In "Management—Responsible or Dominant?" 1 *Public Administration Review* 390-392 (1941).

[2] "The Relation of Government to the Economy of the Future," 49 *Journal of Political Economy* 797-816, at 805 (1941).

narrowness and provincialism in administrative circles, much is to be said for the wide use of something like the British commissions of inquiry which allow persons from all sections of the country and from all interested groups to participate in the development of departmental legislative proposals. In our national government it is desirable to give field employees a voice in the preparation of such proposals and not merely the Washington staffs, as now appears to be common practice. Where the proposed legislation requires state cooperation, state administrators should likewise be consulted; and they clearly should be given a part in the preparation of legislation which is to be put through legislatures. Consultation with other interested departments should be continued but brought out into the open. These suggestions will mean, of course, longer consideration of legislative proposals within administrative circles and increased work devoted to their development. They should serve, however, to lessen the very real danger of a strong reaction against the legislation finally enacted and against all active participation of departments in statute lawmaking.

The functions of Congress in statute lawmaking have not been rendered any the less important by the increased participation of administrative departments in this process. Congress must sit in judgment upon their legislative proposals in much the same way as it does upon those originating with private interests. It will have to pass on their practicality and, above all, on their feasibility in the light of prevailing public opinion. As with private proposals, it will often have to work out compromises, less perfect but more enduring. It should neither shy away from departmental proposals nor merely rubber-stamp them. It should make the fullest possible use of administrative wisdom and the experts' special knowledge but should also make certain that all other interests have full opportunity to present their views and that they are given real consideration in legislative deliberations.

Extensive participation by administrative departments is an important characteristic of statute lawmaking today. It deserves more attention than it has received from students of administration and legislation. It is here to stay, because it has become a necessary part of the efficient functioning of democratic government. The basic problem is how to make it a more effective instrument for an improved democracy.

Administrative Aspects of the Federal-State Legislative Relationship

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WITH fashionable anonymity, Publius remarked in the forty-fifth number of *The Federalist* that: "The state governments may be regarded as constituent and essential parts of the federal government; whilst the latter is nowise essential to the operation or organization of the former."

That state governments are constituent and essential parts of the federal government has long been an acceptable axiom. The most ardent advocate of state's rights, however, would not now hazard literal support of the last clause in Publius' comment if it meant withdrawal of federal support for state highways, the state unemployment compensation program, or the manifold services of state agricultural experiment stations—to mention but a few of the more obvious dependencies of the states.

The political organization of our country today has assimilated many of the theories for which the Federalist debaters fought so hard. Social and technological developments have brought a degree of national maturity which emphasizes intergovernmental cooperation rather than conflict in federal-state relationships. This trend toward cooperation is constantly expanding, both in administration and in legislation.

One of the emerging patterns in the legislative field is the coordination of state lawmaking policy with the lawmaking policies of Congress[1] and with the policies of administrative agencies to whom Congress may, from time to time, delegate rule-making power. Nor does this emerging pattern limit the states alone, for the converse, coordination of legislative policy at the federal level to conform to well-established state traditions, is of equal importance.

It is intended in this paper to illustrate the nature of federal-state legislative relationships, to discuss the organization of federal administrative machinery to meet present-day requirements, to describe the existing procedures used by federal departments and agencies in coordinating federal-state legislative policies, to set out certain principles for streamlining state legislative informational services, and finally to speculate briefly on developments that might come out of the future.

I

IT IS well recognized that legislative bodies exercise a wide range of control over chief executives and their administrative subordinates through such devices as appropriation, audit, impeachment, and investi-

[1] In his Budget Message delivered to Congress on January 8, 1942, the President stated that: "The fiscal policy of the Federal Government, especially with respect to public works, is being reinforced by that of State and local governments."

gation. State legislatures not only exercise these controls over the state and local administrator groups, but in many direct and indirect ways they constitute forty-eight masters that must be served by federal administrators.[1] Thus neither federal administrators nor the Congress, to whom they are primarily responsible, can afford to overlook or ignore this important aspect of intergovernmental relations. Often during the last decade the limelight of academic attention has been focused on the interdependence of *administrative* processes at the local, state, and federal levels of government. Recent developments are bringing into focus the counterpart—federal-state *legislative* interaction.

There are many things which states can do to give definition and force to national programs. Possibilities range from the spending of federal grant-in-aid funds to the enactment of conservation legislation—from the pure mechanics of administration to participation in broad economic and social planning. Most of these activities have their roots in legislation.

A contemporary example of a direct relationship between state legislation and a federal administrative program is drawn from the experience of the Bureau of Unemployment Compensation in the Social Security Board. All but fifteen of the fifty-one jurisdictions covered by the Social Security Act passed unemployment compensation laws by December 31, 1936; less than a year and a half after the federal act was passed. The remaining states enacted legislation in the first half of 1937.

Hastily dealing with an unfamiliar subject matter, the state legislatures were at first guided almost entirely by bill-drafting recommendations from Washington. Then followed a period of minor readjustments contained in amendatory proposals originating, for the most part, in newly created state unemployment agencies. State agencies were asked, but were not required, to submit these proposals to Washington for review through the regional Social Security Board offices. Up to this point we had significant influence upon local bill-drafting ideas on the part of either the Washington or regional offices or of state offices created under the patronage of the federal agency. As time went on, however, new interest groups appeared on the scene and bills are now being presented, with strong local support, which tend to hinder efficient federal administration or even to sabotage it. Thus both Washington and the regional offices, as well as the state agencies, find it necessary to keep an eye on what is going on.

State legislatures influence federal programs in less obvious ways, too, when there is no reference in a congressional act to state administration. The typical government corporation or government lending agency is illustrative of this circumstance. The Rural Electrification Administration, particularly in its earlier years, sought the adoption by certain states of special public utility cooperative enabling acts. These acts were often designed to eliminate restrictions imposed upon ordinary profit-making corporations by simplifying procedures or lowering tax rates.

The Reconstruction Finance Corporation, in lending money for the rehabilitation of drainage districts, always found that it had to consider the state laws under which the districts were organized as a major factor in the security of its loans. Policies of the Farm Credit Administration and the quasi-public credit agencies through which it operates must also be conditioned by individual state landlord-tenant legislation and by statutory provisions governing conveyances of real property, foreclosure of mortgages, and lien priorities. Quasi-judicial agencies, such as the Interstate Commerce Commission, the Federal Trade Commission, and the Federal Power Commission, are likewise making decisions and formulating policies that must fall within

[1] Philip M. Glick, "The Soil and the Law," *Soils and Men—Yearbook of Agriculture 1938*, p. 297.

the framework of state statutory law.

Aside from direct instances in which the administrative functions of federal departments and independent agencies are conditioned by state legislation, there are other impacts of a more general nature. Planning for the national welfare has long since come to be recognized as an important duty of the national legislature as well as of the executive. The National Resources Planning Board is the spearhead of the executive attack on this problem, but the several departments and large independent agencies also have their research groups busily engaged on a maze of subordinate fronts.

That research and planning at the federal level depends upon and relates itself to state legislation is well recognized in Secretary Wickard's statement for the foreword of a Department of Agriculture report (April 1941), *State Legislation for Better Land Use.* "All three levels of government—local, State, and Federal—are now concerned with the common problem of maintaining and improving our basic soil resources. The success of the programs of each affects the success of the programs of the others."

It is a truism that state legislation stands as a proving ground for ideas in connection with research and planning programs. The Department of Agriculture through the publication of its report, *State Legislation for Better Land Use,* has given active sponsorship to the more fruitful development of that proving ground. Other examples could doubtless be taken from the experience of other agencies. Nor is Congress itself immune from interest in the trends in economic and social viewpoints expressed from time to time by the states. Not only are many of the well-accepted devices adopted by Congress traceable to the example of earlier state innovations—such as the present system of regulating utilities—but Congress must on occasion be guided by pronouncements of the other legislative bodies in the nation when considering major current issues.

Examples of federal-state legislative relationships, insofar as they concern the President and Congress, need not be further multiplied to illustrate the necessity of providing information and reviewing channels through which the right hand may know what the left is doing. Consideration of state legislation and national planning, as well as national law enforcement and other important matters, would be incomplete, however, if the phenomenon of regional legislation were to be omitted.

Just how complicated regional legislation can become may be seen from the history of the new Potomac Valley Conservancy District. The problem was one of providing stream-pollution regulation on a river which drains parts of four states and the District of Columbia. In September, 1935, the Special Advisory Committee on Water Pollution of the National Resources Committee recommended the establishment of the district as a demonstration unit. The Rivers and Harbor Committee of the Washington Board of Trade became interested and sought special publicity for the project. In March, 1937, it called a conference of state and federal representatives, including state health officials, U. S. Public Health Service engineers, and officials of the Council of State Governments. The conference organization was formalized at the March meeting, and an executive committee was appointed to work out details of cooperative state action. A formal compact was drafted and submitted to the conference on October 20, 1938. Maryland ratified the compact in 1939; Virginia and the District of Columbia in 1940; and West Virginia in 1941. Congress gave its official sanction in 1940. The compact is in force, despite Pennsylvania's failure to act, because it called for a majority ratification plus congressional approval.

Here, then, is a subject upon which legislative policy has been set and statutory action taken by both the states and the federal government. Many other examples of such joint action could be found as well as of cases in which national administration and national planning are implemented by state legislation.

II

THE preceding discussion indicates something of the nature of the legislative relationships that exist between the federal and state governments. The examples cited are rather obvious ones, for it is well recognized that national programs for many years have tended to transcend jurisdictional boundaries. The development of federal-state cooperation in enacting complementary legislation is a logical sequence. However, the development of organizational structure and operating procedures in federal administration as it relates to state legislation has lagged behind the growth of functions to be performed.

In theory and practice legislative coordination is analogous to the problem of administrative coordination since both are inseparable parts of policy formation and the execution of programs. Neither in the operating agency nor in the individual position is it possible to make a clear-cut separation between the legislative and the administrative process. Just as the Chief Executive has assumed new administrative responsibilities in the evolution of his office, so has he assumed new obligations for leadership in legislation. Nor are obligations of the Chief Executive merely confined to one level of government; they are legislative obligations to any level of government where his program is involved. When, for example, a congressional law is enacted which must be predicated upon and complemented by legislation enacted at the state level, then the President has assumed some legislative responsibility in relation to state governments. If one goes further and concludes that Congress is but a regional body legislating for sectional interests, and that it is only the President who truly represents national policy,[1] then the Chief Executive's legislative relationship to state activities correspondingly increases in importance. The Executive Office should, accordingly, be so organized and staffed that the President will not only be informed of federal interest in state legislation but of legislation that states are enacting in cooperation with federal programs.

Organization for state legislative expression is no less important at the departmental than at the executive level of the government. The secretaries or agency chiefs assume the same responsibility for policy formation in relation to departmental programs as the President in his capacity as over-all executive. The same theories of administration that Arthur Macmahon has so admirably described in his essay on "Departmental Management" are equally valid in their application to the organization of the legislative function.

Of course, the extent to which departments and agencies will be concerned with state legislation depends on the programs that are being administered. On the one extreme, the department may express no interest in state legislation whatsoever. This view was taken by an administrator of an old-line agency, who maintained that the states followed federal standards as set by his organization, and that there was, therefore, little need of bothering with state legislation. The other extreme is illustrated by an agency such as the Bureau of Employment Security which not only was instrumental in drawing up the original legislation for states to enact, but which continually checks on state legislation to ascertain its compliance with federal requirements. Between these extremes are found those agencies which receive only infrequent and incomplete reports of state legislation, other agencies which attempt to keep an accurate check of all legislation affecting their sphere of activity so that they are able to formulate departmental programs enlightened by state trends or adjusted to state requirements, and still other agencies which are actively doing research and giving technical assistance to state officials and agencies. But whatever the departmental interest in state legislation, it is essential that this interest be brought to the

[1] See M. L. Wilson, *Democracy Has Roots* (Carrick and Evans, 1939).

top of the administrative ladder and related to over-all considerations of policy and administration.

Governmental agencies do not always take the same attitude toward the solution of social problems. Different agencies may express various shades of the conservative or liberal approach. Departments and bureaus can be special-interest groups serving their own "clientele." [1] Viewed in this light, it is often to the advantage of an organization to withhold information on its legislative activities since this may be a means of preserving its program from what might be the interests of other agencies.

Even in the same department two bureaus may come in conflict over legislation introduced in particular states. What then must be the conflict in broad fields of governmental endeavor, such as social security, labor, taxation, or housing? To be more specific, how do states form a clear picture of federal policy in broad social-economic fields? When several agencies represent different philosophies, how do state legislatures ascertain what the government's policy is with regard to the family-sized farm in their region or state? How do states determine the federal government's land-use policy when different agencies are promoting what would seem to be conflicting irrigation and drainage programs? How are states, in a legislative program which is to balance rural and urban interests, to decide which of the philosophies of centralization or decentralization of industry should prevail in the location of defense plants? These and many other questions are problems upon which state legislation in the formation of a policy has a direct bearing and relationship to federal action programs.

Are there no better ways of crystallizing federal attitudes toward legislative programs than experimentation, compromise, and conflict? To a degree, interdepartmental committees, conferences, and similar devices may be used. Also to a degree, informal relationships are useful in the formation of state legislative policy. But if over-all federal policy is to be put into effect through executive and departmental action programs, it is essential that channels be perfected for bringing the requisite knowledge and information to those who guide the operation of these programs. The Chief Executive and departmental officials must be kept informed of the influence of national programs upon state legislation and of state legislation complementary to federal programs. Not only will this tend to promote a clarification of policy at the federal level but it will enable the states to be more effective in cooperating with the federal program, as they are more and more often called on to do.

Furthermore, a federal pool of state legislative information might become useful to the states in other ways than in perfecting cooperative relations with the central government. There are scores of problems having a typically local flavor but with common denominators in every section of the country, which state planners and state legislators are constantly seeking to solve. In so doing, they always need and appreciate information concerning ideas that are being tried out in other states. Supplying that information is a service that can be provided by the federal government at little extra cost to itself and with large savings in money and efficiency to the states.

In summary, a few criteria are listed which would seem to be determining in any organizational pattern designed to clarify the federal-state legislative relationship.

1. The federal-state legislative relationship is a two-way process in which both the federal government and the states have a continuing and mutually dependent interest. Each government must be constantly informed of the legislative intentions of the other. Official legislative channels should be created which would facilitate this joint legislative process.

2. The federal administrative machinery should contain some reconciling devices

[1] See Ernest S. Griffith, *The Impasse of Democracy* (Harrison-Hilton, 1939), chap. ix, "Economic Forces and the Administrative Process."

which will tend toward the development of a consistent federal-state legislative policy. Policy officials must be constantly aware of the federal government's interest and departmental reliance on state legislation. All federally sponsored state legislation should be cleared at whatever levels in the administrative organization may be necessary to avoid conflicts with the policy of the President and to prevent the occurrence of ordinary inconsistencies.

3. Any recommendations of this nature should give consideration to existing channels. Thus in determining administrative organization for a given Washington agency it is necessary to adapt it as closely as possible to the present scheme of operations, the historical background of the agency and its functions, and the experience the agency has had in the performance of its functions. Furthermore, the voices of local groups—in various parts of the country where federal functions are being put into effect—should be permitted to filter through to the top so they can be helpful in over-all policy formation.

4. The central pool of state legislative information created by the federal government as a service to its administrative and legislative branches should likewise be made available as a service to state and local officials for planning typically state and local programs.

III

MANY federal agencies have already laid the groundwork for a state legislative organization and reporting service. These initial efforts have been chiefly informal and perhaps an almost unconscious acceptance of necessity in the performance of new functions. In this discussion, the growth of federal organization for dealing with state legislation will be treated at the level of the President's Executive Office and of the departments, and as an aid to Congress. Some consideration will be given also to state legislative procedures and their implications for organization at the federal level.

The Executive Office

During the hectic early days of the New Deal, an agency known as the National Emergency Council came into being. It was composed of the cabinet members and heads of the new recovery and relief agencies, with the President of the United States as chairman. This agency was set up to assist the President in the development and coordination of his program. The National Emergency Council's responsibility for legislative clearance and legislative reporting developed rapidly on both the federal and state levels. All bills sponsored by federal agencies were to be cleared through the Council before being submitted to state officials. Through the conference method, the National Emergency Council attempted to iron out contradictions and difficulties in legislation that arose between departments. While the Council never was given specific veto power over legislation proposed by a department, through its directors (beginning with Donald R. Richberg to Lowell Mellett) this agency always had the ear of the President. The Chief Executive could thus use his discretion in taking whatever steps were necessary in minimizing legislative contradictions.

To handle state activities the National Emergency Council established an office in each state, headed by a director who was directly responsible to the Council. The function of the state director with respect to legislation was twofold: (1) to represent the Council in the transmission of federal legislation to state officials and agencies; and (2) to report to the Council, and through the Council to departments, the introduction and progress of legislation affecting federal programs. State representatives of the Council assisted in the presentation of legislation proposed for the state only upon the request of the federal agency concerned and in all cases worked as closely as possible with field employees of the federal departments, both in the clearance and transmission of legislation for state enactment and in the reporting of state legislative activity. The state director

arranged conferences of federal agency officials at the state level for discussion of their problems and mutual needs in order that legislative programs might be coordinated and that the burden falling on the shoulders of state officials responsible for examination of proposed legislation might be lightened. Conflicts that were not settled at the state level or that were properly a matter for Washington officials to decide were forwarded to headquarters in Washington. Besides informing the Washington office of legislative problems and developments, the state representatives forwarded copies of bills and laws and reports concerning the status of state legislative programs.

Directors chosen to represent the National Emergency Council were state men, familiar with state government and administration, and able to make influential contacts. Offices were established at the state capital or at cities where the federal agencies were concentrated, and a small clerical staff was placed at the disposal of the director. The state director, as a representative of the President through the Emergency Council, was the individual responsible for federal legislation at the state level.

Under Reorganization Plan No. II, the National Emergency Council was abolished. Its functions were transferred to the Executive Office of the President and set up within a newly created agency, the Office of Government Reports. This Office, through its Division of Field Operations, has continued the duties carried on by the National Emergency Council in connection with state legislation. As the Director of the National Emergency Council became the Director of the Office of Government Reports and was also appointed one of the presidential assistants, the Office of Government Reports has continued to have a confidential pathway directly to the President's office.

The Office of Government Reports has increased the function of state legislative reporting as begun by the National Emergency Council. While procedure varies in states because of the difficulties in reporting state legislation, reports of state directors are gradually being put on a more complete and regular basis. The Office of Government Reports, through its field representatives, attempts to supply all legislative information which departments have requested. State legislation is classified and digested and forwarded directly to individuals and departmental bureaus. Legislative channels between the Office of Government Reports and the departments have been, for the most part, informal and direct, though bureaus such as the Farm Security Administration or the Bureau of Agricultural Economics in the Department of Agriculture have designated individuals who are to be their official representatives in dealing with the Office of Government Reports.

All state legislative information that reaches the Executive Office is not channeled through the Office of Government Reports. The President acquires legislative information through his secretariat, his relationships with congressional leaders, and his public contacts. The Budget Bureau also acquires state legislative information, but this is incidental to its function of checking on federal legislation and budget appropriations. And finally the National Resources Planning Board in the Executive Office follows certain types of legislation in the field of planning. But no individual or agency in the Executive Office has had as much responsibility or interest in state legislation as the Office of Government Reports.

If attempts are made to draw conclusions concerning existing federal organization to deal with state legislation, these points stand out in relief.

1. The National Emergency Council and its successor, the Office of Government Reports, have set up a working organization which is actively engaged in clearing and reporting state legislation. State field offices have been established, and legislative channels between the federal departments and the field have been created.

2. The Office of Government Reports, as a staff agency in the Executive Office, has

been in such relationship to the President that it has been possible to inform and advise him concerning state legislative policy.

3. The Office of Government Reports has been handicapped in several ways. First, prior to June, 1941, it operated on an emergency basis under authority of executive orders. Furthermore, the proportion of its total funds available for the state legislative work was not adequate for full legislative reporting coverage. These problems were somewhat alleviated when Congress placed the office on a statutory basis and gave it an appropriation. Second, federal agencies have sometimes been reluctant to submit their proposals for clearance, partly because of a feeling that the clearance procedure might retard or complicate their programs and partly because the Office of Government Reports—during its emergency days—did not have prestige equivalent to that of some older agencies. The organization was also criticized at times as an agency that merely assisted the President in gauging "political winds." [1] Third, because of the foregoing, many agencies preferred to depend upon their own field representatives both for the transmission of legislative ideas to the states and for the acquisition of complete legislative reporting services.

The Departments

Activities within federal departments and agencies dealing with state legislation may be classified under the following headings: (1) between the department and its field representatives; (2) with the Office of Government Reports; (3) with quasi-governmental organizations; and (4) with commercial and library reporting services.

By far the most important channel through which contact with state legislative activity takes place is within the department through the use of regional and state offices and field representatives. This is only natural, as field employees are always most concerned about programs at the state and local level. Where a federal agency is actively sponsoring legislation or following state legislation it is natural for it to rely upon persons who are most familiar with departmental objectives. Its field offices and representatives are very often in close contact with state administrative officials who represent similar activities. Thus, for example, the Labor Department has close contact with labor and welfare bureaus at the state level; the Department of Agriculture with agricultural agencies; and the National Resources Planning Board with planning boards. In working in the legislative field, it is mutually advantageous for administrative agencies to cooperate.

Legislation designed to serve as a state enabling act and proposed state laws of national significance are ordinarily cleared within a department among bureaus having a direct interest in the legislation. For example, five major bureaus in the Department of Agriculture, in addition to the Secretary's Office, participated in formulating the Standard Soil Conservation Districts Enabling Act. Where legislation is drafted by the department for a particular state only, it is desirable that clearance beyond the bureau level be assured. And legislation that is drafted by departmental representatives and state officials in the field should always come to the attention of bureau chiefs.

The Office of Government Reports is the only central staff agency through which legislative information is transmitted. As indicated in preceding paragraphs, informal communication takes place between this Office and the federal departments at both the national and state levels. However, official legislative reports and legislative materials such as bills and laws that eventually reach departmental officials are, for the most part, channeled through the Washington OGR office, which acts in a clearinghouse capacity. The volume of legislative materials forwarded to the departments by the Office of Government Reports has increased many times over during the last few years. The Office of Government Reports now services

[1] See *Congressional Record* for Tuesday, May 20, 1941, and Wednesday, June 25, 1941.

practically every major department or agency in some form or another.

The growth of quasi-governmental organizations and professional associations of government officials has been a large factor in developing the field of governmental relationships. Organizations such as the Council of State Governments, the American Public Welfare Association, the National Association of Housing Officials, the Federation of Tax Administrators, and the National Child Labor Committee, to mention but a few, are in constant contact with the government's representatives. Well posted on legislative developments, organizations like these do much toward reviewing and cataloging state legislation. The product of this legislative interest leads to much uniform legislation and many model laws. One of the best illustrations of the contact that takes place between a governmental agency and a quasi-governmental organization is the relationship between the federal government's Interdepartmental Committee on Interstate Trade Barriers and the Council of State Governments. Sponsored by the Department of Commerce, cooperating with nine other federal agencies, this organization (an informal committee on interstate trade barriers) analyzes and reports trends in interstate trade barrier legislation. The committee has no direct contact with state legislative programs. When a bill is discovered which appears to be an interstate trade barrier bill, the committee notifies the Council of State Governments, which in turn contacts state legislative commissions on interstate cooperation. Thus, by a somewhat circuitous route but in effective manner, the committee has called state legislators' attention to legislation which will eventually boomerang to the state's disadvantage. Illustrations such as these indicate the importance of the quasi-governmental agency in facilitating relationships between the levels of government.

Finally, dependence by departments and agencies on commercial and library reporting services is fairly extensive. These services are used chiefly in the review and compilation of state bills and laws. Nearly every major department has some bulletin or publication which summarizes state legislation on a current or annual basis. Examples of these publications are: *Digest of Outstanding Federal and State Legislation Affecting Rural Land Use*, published by the Bureau of Agricultural Economics; *Digest of State and Federal Labor Legislation* of the Division of Labor Standards, and the *Legislative Reports* of the Bureau of Employment Security.

Commercial organizations are an important source of state legislative information. The two largest companies in the business, Commerce Clearing House and Prentice-Hall, perform an extensive reporting and digesting service on a contract basis. Federal agencies may contract for bills and laws of any state for any field of activity. These agencies also provide special services, such as the State Tax Service, the State Labor Law Service, or the Food, Drug and Cosmetics Law Service, which are up-to-date compilations of laws and include administrative rulings and court decisions applicable to each statute. The extent of these services is illustrated by an estimate from Commerce Clearing House which indicates that it is furnishing legislative service of one variety or another to more than one hundred governmental agencies in Washington.[1] The sum spent on these contracts is, of course, considerable, and in several cases governmental bureaus have expressed a desire for more information than they could afford.

Libraries furnish much state legislative material to federal agencies. The Legislative Reference Service of the Library of Congress is, by far, the most important contributor in this respect. State legislative reference services and state libraries have many direct contacts with federal agencies. Prior to the work of the Office of Government Re-

[1] This estimate includes agencies which also receive the federal legislative service.

ports, the Bureau of Agricultural Economics, for example, had direct legislative contacts in every state for legislative sources of information.

Despite well-defined channels of information, there exists at the departmental level, with few exceptions, no formal organization for handling the federal-state legislative relationship. For example, there is nothing comparable to the Legislative Coordination Section of the Office of Budget and Finance in the Department of Agriculture, which has been organized to clear departmental proposals for legislation through the Budget Bureau and to report to bureaus within the department concerning federal legislation affecting Agriculture's program. The nearest approaches to organization for state legislation are exemplified by the Legislative Analysis Research Section of the Bureau of Agricultural Economics, the Legislative Section of the Bureau of Employment Security, the State Section of the National Resources Planning Board, the Legislative Reporting Section of the Division of Labor Standards, and the Division of State and Local Government in the Bureau of the Census. While these organizations report and analyze trends in state legislation for departmental officials, they are in no way coordinating agencies.

Many departments have designated individuals who are to be responsible for following the legislative activities of the department; this is especially true of federal legislation. In some cases, these employees also assume responsibility for state legislation. Individuals in the solicitor's or general counsel's office often assist in reviewing legislation from technical and legal points of view. It is also true that much legislation is reviewed for policy, but such review is irregular and informal. Responsibility for state legislation in terms of organization at the departmental level has yet to be defined.

The following conclusions may be drawn from existing departmental organization to deal with state legislation.

1. There is no single procedure or routine method for clearing and reporting state legislation to federal departments. Many channels have been created through which federal departments keep in touch with state legislative programs, but these channels have been developed by a "rule of thumb" method rather than by an "administrative approach."

2. In no department or agency is there any formal acknowledgment of the need for organization to facilitate the federal-state legislative relationship. This may be attributed to an unawareness of the part that state legislation plays in departmental activity and to the fear of repercussions arising from charges of meddling with state affairs. With one or two exceptions, little attempt has been made to collaborate interdepartmentally on clearing or reporting state legislative programs.

3. Federal organization to clear state legislative activity has been unbusinesslike. There has been no attempt to centralize procedures for handling state legislation; much duplication of effort exists. A large amount is being spent for private reporting of state legislation when much of this work could be performed by a central staff agency. Systematic and coordinated organization of the federal service for state legislation would be in the interest of improving business management.

4. The multiplicity of contacts concerning legislation that has existed between federal and state governments in many cases has proved annoying to state officials and has not promoted the best relationships. One state officer reported, upon inquiry, that within a period of a week, representatives of three federal departments had requested a "bill and law service" through the medium of his office. State officials would find it to their advantage to have the usual routine legislative requests channeled through a single federal office in the state. This procedure would also give federal departments better service and information.

Congress

In preceding paragraphs, some review of congressional interest in state legislation has been given. To facilitate access to state laws, the State Law Index has been established as a branch of the Legislative Reference Service in the Library of Congress. While the Library of Congress has no statutory power to service federal departments with legislative or other information, by mutual agreement there is much interchange of materials. With the exception of special congressional and departmental requests, the main interest of the Library of Congress in state legislation has been less in current programs than in the digesting and compilation of legislative materials. Regular and occasional publications of the State Law Index Section include: *State Law Index;* a series, *Current Ideas in State Legislation;* a *Bibliography of Sources of Information;* a list of Supreme Court decisions declaring state laws unconstitutional. More recently, this section has expressed an interest in current legislation and has brought out a new bulletin entitled *State Legislation of 1941* which includes a series of monthly summaries.

The Library of Congress has excellent facilities for the indexing and classification of legislative materials and has unique depository advantages. Its library of state legislation is, by far, the most complete that exists in Washington. Over the past years a staff has been developed which is familiar with state legislative procedures and problems connected with the classification of state legislation. The facilities offered could be more profitably used by other federal agencies.

State Legislative Procedures

It is impracticable to talk of organization for clearance of state legislative activity at the federal level without giving consideration to state legislative procedures and the facilities for acquiring state legislative materials.

In their attempts to procure legislative information and reports federal officials are often bewildered by the intricacies of state legislative procedures. States are in and out of legislative session. The organization of legislative committees varies from state to state. A variety of rules governs the introduction and passage of bills. Many states do not have adequate printing facilities, or legislative materials may not be printed until they have reached a final form. It may, for example, be impossible to get copies of bills introduced until they have reached the stage of engrossment. Governors exercise different grants of veto power. Legislation enacted may take effect upon gubernatorial approval or not until a period of time has expired after the date of passage. During legislative sessions, when bills are numerous and committee activity is going on at a terrific pace, there is, indeed, little wonder that the federal official in Washington gets lost in the labyrinth of state legislative procedures.

Federal officials in the field are usually better informed of state legislation within their region, but they are virtually at the same disadvantage as the Washington staff in acquiring material which is printed. This statement is especially true where the state does a minimum of legislative printing.

IV

THE President's Committee on Administrative Management recognized the importance of federal legislation to the national government's administrative machinery and specifically recommended that the Bureau of the Budget should be responsible for checking and clearing the congressional measures proposed by executive departments. No comparable recommendations were made with respect to state legislation sponsored by federal agencies.

As a matter of fact, the time was not ripe nor was administrative experience sufficient to warrant detailed suggestions for clearance of federally sponsored state legislative proposals. Something might have been done, however, in connection with the business-like performance of legislative reporting.

Mr. Fesler's study, for example, reviewed and appraised the functions of the National Emergency Council in its field activities and concluded that reporting was not a function to justify the continuance of a field staff. Mr. Fesler believed that the field officials of the departmental agencies concerned should do the reporting. He was, of course, thinking of the reporting function in its broadest terms. Admitting the shortcomings of the National Emergency Council as he found them, there is still justification for an overall agency to furnish a legislative reporting and information service—an agency to deal with a single concrete segment of the total reporting function.

It is this specific job of formalizing and streamlining the process of reporting that seems to us to be the first task in exploring the substance of the federal-state legislative relationship. To that end we suggest the following minimum requirements for administrative organization.

Central Reporting Agency

1. There should be a separate agency located in the Executive Office upon which complete responsibility for all phases of the state legislative reporting process could be placed, both for the Executive Office staff and for the entire administrative branch of the federal government. The Office of Government Reports, by heritage and background, is the agency best suited for the job.

2. The legislative reporting process should include the procuring of copies of all bills introduced in the state legislatures, current statements concerning progress of bills, copies of laws as finally enacted and information as to the reasons for introduction of bills, results anticipated from passage of bills, and other related items. The service should be so complete that any federal agency could be quickly and fully informed concerning any current state legislation affecting a federal question. Methods of procedure need to be worked out in cooperation with those who will be using the service. To this end, it may be desirable for the central reporting agency to make an early complete survey of state legislative informational requirements. The Office of Government Reports, through its State Legislative Section, is already making excellent progress in the development of reporting techniques.

3. The Office of Government Reports—at least in its capacity as the state legislative reporting agency—should maintain an office near the statehouse in every state. A permanent legislative reporting clerk should be employed to supply information and copies of bills quickly and efficiently to the central office in Washington and to service other federal agencies in the field. Whenever possible, this permanent state office should be tied in with the state's own legislative reference service. The Office of Government Reports should take full responsibility for answering inquiries from federal officials addressed to any given state capital. Federal departments could thus be assured of better service and state officials would be relieved of the necessity of serving individual federal departments. The expenditures now made by federal departments for maintaining their own legislative contacts and channels of information would, in large part, financially compensate for the costs of such a service.

4. For the immediate future, it is desirable that the reporting process operate chiefly in the field-to-Washington direction. Some useful function may be performed in sifting federal ideas on state legislation down to state officials, but the legislative reporting agency should participate only in a volunteer capacity. This recommendation is based on the conviction that clearance of proposals from Washington to the field by hard-and-fast rule is likely to be both cumbersome and unnecessary. In other words, the staff legislative reporting agency should not be responsible for preventing an idea for state legislation from being sent to the field by the National Resources Planning Board, for example, before it has been cleared with the Office of Emergency Management. It should

be responsible, however, for keeping every agency so well informed of what is going on in the states that each office could quickly detect proposals by other federal agencies which it felt to be contrary to the administration's policy or generally inconsistent. Then a direct contact could be made with the agency and the matter could be quickly resolved. There are in current practice—as there should be—informal channels of communication to assist in the correlation of policies in the drafting of state legislative proposals. The chief evil to be avoided is overmuch bureaucratic clearance at a level of government so remote as Washington is from the scene of action.

5. The central reporting agency should at all times make its informational resources available to state and local government officials—both in Washington and through the field offices.

Departments and Independent Agencies

1. Every department and independent agency interested in any form of legislative reports should obtain them through the Office of Government Reports. Departmental and agency field staffs should be instructed to make use of the OGR field office in obtaining state legislative information, and they should also be instructed to keep the OGR field office informed of particular programs.

2. Every department and agency requiring state legislative information should streamline its internal organization so that a single channel of communication will be established with the Office of Government Reports. If within the department or agency an office dealing with policy matters in drafting legislative proposals already exists, the two functions—drafting and reporting—might well be joined together. In any case, each bureau and section within the department should make its informational wants known through the liaison officer rather than by multitudinous direct contacts with the Washington Office of Government Reports or by requests to state officials.

The Library of Congress

1. The Library of Congress, although literally a servant of the legislative branch of government, has wide usefulness in the development of an effective state legislative reporting service. As the national library it offers the best facilities for permanent filing and indexing of state bills and laws. It likewise provides a good setting for studies of trends in state legislation—some of them long-time trends, others current. Such studies are valuable to the policy makers as an indication of what the states may or may not be expected to do about some particular proposal. They are also valuable in recording the results of experimentation in the state legislative laboratory.

2. The physical plant of the Library and its staff of well-trained personnel can be useful in many aspects of the reporting service. The Office of Government Reports and the departments themselves should be sure that all avenues of cooperation and coordination are kept open with the Library. It should be said that much has already been done by both the Office of Government Reports and the Legislative Reference Service of the Library to make this cooperation realistic.

V

RECOMMENDATIONS thus far have been chiefly concerned with a streamlined field-to-Washington reporting service covering state legislative activities that are of interest to the several branches of the federal government and that may be of interest and use to state and local officials who wish to rely upon them for planning programs at those levels. The ever increasing centralization of American federalism exerts constant pressure upon legislative processes. In the near future new devices will have to be found for coordinating legislative policies among the municipalities within a given state, among the states themselves, and finally between the states and the federal government. How this can be accomplished without over bureaucratization, undue con-

centration of power in Washington, and disregard of the "grass roots" are matters of the utmost consequence. Already novel developments are taking place which give hints of solution through quasi-governmental organizations, congressional committees, and departmental administration.

One such development is the Council of State Governments. The Council was formed only six years ago to serve as a permanent secretariat for the state commissions on interstate cooperation. Its accomplishments are too numerous and too well known to permit of description here. Suffice it to say, in the words of Henry W. Toll, founder and first director of the Council, "The task of developing proper coordination among the units of government in the United States is recognized by all students of government as a major concern of our nation. Many of them would agree that it is *the* major governmental concern of our nation. It will require the services of a tremendous number of people, and it will be an expensive undertaking."[1]

In Congress, a proposal with a future worth noting is that which would establish a joint federal-state committee on intergovernmental relations. Originating with the Council of State Governments, the suggestion has been supported by the Interdepartmental Committee on Interstate Trade Barriers in testimony presented in 1941 before the Temporary National Economic Committee.[2]

The federal-state committee would represent a synthesis of legislative and administrative interest groups meeting on common ground to study and recommend ways and means of alleviating hindrances to interstate trade. Membership would consist of two senators appointed by the Vice President; two representatives appointed by the Speaker of the House; four citizens representing the states, designated by the Council of State Governments and appointed by the President with the consent of the Senate: and one member each from the Departments of Commerce and Agriculture, the Federal Works Agency, and the Interstate Commerce Commission. When it is realized that this committee may also consider other problems as assigned by Congress, who can prophesy the role it might eventually play in the legislative relationship or the precedents that might be inaugurated?

A final example among "modernistic" styles in legislative relationships is taken from administration in the Department of Agriculture. Following a conference at Mt. Weather, Virginia, in 1938, the state land-grant colleges, the state extension services, and the United States Department of Agriculture agreed upon the broad principles to be followed in establishing a program of county land-use planning throughout the country. The purpose of the conference and the agreement was to find answers to the problems of (1) administering a national program in such a manner as to accomplish its national objectives without precluding local variations to fit differing physical and economic conditions; (2) unifying federal, state, and local agricultural programs so that they are essentially a single program when they reach the individual farm; and (3) clarifying the responsibilities and working relationships of the United States Department of Agriculture and the land-grant colleges.[3]

Beginning in 1939 committees were set up in one or more counties in each state, composed of county representatives of Department of Agriculture agencies (AAA, FSA, etc.), representatives of state and local governments in the county, and a majority of farmer members. Farmer members were chosen, for the most part, by votes at community meetings within a given county. Comparable committees were organized at the state level, and in June, 1941, regional

[1] "Horizons of the Council," *The Book of the States, 1939-40*, p. xiv.

[2] Sen. Doc. 35, 77th Cong., 1st Sess., *Final Report and Recommendations of the Temporary National Economic Committee* (1941), pp. 353-55.

[3] See Bushrod W. Allin, "County Planning Project—a Cooperative Approach to Agricultural Planning," 22 *Journal of Farm Economics* 292 (1940).

conferences of representatives from the state committees met throughout the country. County committee organization has not yet been completed for every county, but in a little over two years' time enough has been accomplished by the combined planning efforts of farmers, administrators, and agricultural subject-matter experts to warrant the attentive observance of persons who seek to provide channels of democratic control from the last drainage ditch in Arkansas to each swivel chair in Washington, and return. Furthermore, lest the connection be obscure, let it be said that the county, state, and regional committee device offers excellent possibilities for obtaining coordination of legislative policies on the geographical scene of application. In this way differences of opinion among experts, administrators, and ordinary citizens can be reconciled about a single conference table with resulting recommendations that will be put to use by county boards of supervisors, city councils, state legislatures,[1] and perhaps even by Congress.

[1] The most outstanding recent achievement of a state agricultural planning committee in dealing with state legislative problems is the preparation and issuing by the Mississippi Committee of a report entitled *Mississippi State Legislation for Agriculture* (mimeo.), Starkville, Miss., Jan. 1, 1942.

The Reform of Federal Administrative Procedure

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THE Battle of Administrative Procedure has been fought with wearisome hyperbole. It is time to shrink the field to manageable proportions, to leave off shouting the bloated war cries. There are still a few who think to create an effect by damning administrative power as a conspiracy to force upon the country alien policy without mandate and in defiance of the forms of law. These appeal only to the desperate or the cynical. Equally there are the administrators and their party (in whose ranks I am often found) who bridle at the suggestion of any new limitation, particularly when it bears a resemblance to an existing judicial form. In their opinion, such suggestions must proceed either from a malign heart desirous of destroying the new edifice of policy (as indeed is often the case) or from a stupid tradition-bound head who does not understand that the objectives of judicial and administrative power are completely disparate. A whole list of attributes is then ritually intoned: the courts are slow and cumbersome (*Jarndyce* v. *Jarndyce*); they act with intricate and antiquated rules of evidence; they lack expert knowledge. If, the argument proceeds, the administrative process is to be "entirely judicialized," it will no longer be able to function. I suggest that the debate carried on in these terms is a debate of straw men. Debate so pompous, so self-satisfied, so humorless, and so uncompromising, becomes at last enervating. There is only so much energy available for the solution of these important problems. Let us use it to mark out a field in which we can live together without incessant verbal din.

There is still a wide area of agreement in America as to the objectives of politics and law. Nothing is more important than constantly to explore this field and set up notices. We live and act as much by words as by anything else, provided that the words do not place too great a strain on credulity. It has become traditional with us to state the ends of government as a dualism. The theory may be put variously. Let us hazard the statement that the end of government is the application of power sufficient to satisfy the needs of the people as a whole under forms and conditions consistent with traditionally determined safeguards of the individual. It is quite obvious that there is nothing inevitable about any part of this statement. Men might argue, as they have, that the end of government is *ad maiorem gloriam Dei*. They might also argue, as they have, that the traditional safeguards are inconsistent with adequate authority, or that in a capitalist society they benefit no one but the rich, or that in a proletarian society they are unnecessary. But I hold that these arguments are not now our concern. I think that we are all agreed that there can be no society whatever without *a* tradition, and I believe that there is wide acceptance of something akin to what I have stated as *the* tradition. Then certain things follow and must in turn be accepted, for you cannot have things more than a little more than one way.

It must be recognized, for example, that

certain of the safeguards in the tradition may make the administration of a law less effective than its proponents would like. But the proponents are not thereby entitled to reply to those who appeal to the tradition either that they are "reactionaries" or that the burden is upon them to show that the abandonment of the tradition will result in "injustice." The administrator is not entitled to assert either the correctness of his decisions or the decency of his intentions, at least in answer to a complaint of arbitrary methods. Yet the "traditionalist" most often overplays his hand. To him the tradition is a collection of sterile forms without capacity for growth or transformation, without the history which indicates their purpose and so their limitations, exceptions, and variations. "Interpretation" of or in the name of the tradition may, I admit, approach casuistry. For that there is no help if the social fabric is not to be rent to tatters by strain from the right and left.

Before going to the substance, it will be necessary to indicate briefly the present setting in which our drama is being acted. Since 1933 our bar associations have been alarmed by the growth of administrative power. Their annual reports on the subject have at times been scholarly, lawyer-like treatments of well-defined segments of administrative law but have more recently run to shrill indignation.[1] They have called for wholesale revision of the administrative system en bloc. For the last three or four years their proposals have been expressed in various bills introduced into Congress. Their 1940 bill passed both houses while the administration watchdogs were nodding. The President vetoed the bill but must have felt that so continuous and respectable a clamor ought in some measure to be heeded. The Attorney General appointed a distinguished committee of lawyers from the government, the judiciary, the bar, and the law schools—the Attorney General's Committee on Administrative Procedure. The Committee appointed a research staff headed by Professor Walter Gellhorn of the Columbia Law School. The staff produced twenty-seven admirable studies of as many different federal administrative activities, and finally the Committee itself published a report which has already become a basic document in the field.[2]

The Committee proposed legislation which has been introduced into Congress as S. 675. We shall call it the majority bill. Three of the members of the Committee proposed further legislation more restrictive in intention. This has been introduced into Congress as S. 674. We shall refer to it as the minority bill. Some of the forces behind the old Logan-Walter bills have again introduced a bill roughly modeled after the minority bill but with a few original wrinkles of its own. To this we shall refer simply as S. 918. Hearings were held by a subcommittee of the Committee on the Judiciary of the Senate during the spring of 1941. In these hearings some fifty high officials in the government departments and agencies participated in a criticism of the bills. What I have to say below is not a summary either of the legislation or of this administrative critique. But in many places in the argument it will be appropriate to refer to them.

Rule Making vs. Adjudication

AT THE outset there has been raised a fundamental question whether there should be established a general policy that administrative action should proceed by the legislative rather than the judicial mode. A word as to this distinction. There is general agreement

[1] For a description of these and other condemnations, see Jaffe, "Invective and Investigation in Administrative Law," 52 *Harvard Law Review* 1201, 1232 (1939).

[2] For more detailed examination of this report and its proposals than is made here, see Frankfurter, Feller, Dulles, and Davison, "The Final Report of the Attorney General's Committee on Administrative Procedure," 41 *Columbia Law Review* 585 (1941); Jaffe, "The Report of the Attorney General's Committee on Administrative Procedure," 8 *University of Chicago Law Review* 401 (1941).

that the field of administrative action which is here in question may be divided for procedural purposes into two types. The critical assault on dichotomical either-or thinking has not lessened—perhaps indeed has increased—the usefulness of such thinking, since we are more conscious that our categories indicate polarity rather than absolute demarcation, and we are not unwilling to see our categories become friendly and helpful to each other at the edges. These types are the "quasi-legislative" and the "quasi-judicial" categories obvious enough to legislators and judges but only adverted to by professors begrudgingly and superciliously. Legislative action speaks typically by a generalization or rule purporting to govern the future conduct of an indeterminate number of persons. A case may arise where the law is passed with only one person in mind and its real effect may be a judgment on his past conduct. But that is not the ordinary case. Judicial action speaks typically by a judgment made upon the past action of individuals singled out and named for judging. Judgment is conceived as a concrete application of previously announced rule to a determinate state of facts. The rationale of the judgment may and usually will add to or subtract from the generalization as it has been understood and so give the rule for the future. But to the person singled out for judgment this effect is incidental.

The minority and S. 918 bills provide that an administrator "shall as a fixed policy, prefer and encourage rule making in order to reduce to a minimum the necessity for case-by-case administrative adjudications. . . . Where an agency, acting under general or specific legislation, has formulated or acts upon general policies not clearly specified in legislation, so far as practical such policies shall be formulated, stated, published, and revised in the same manner as other rules. . . . Each agency shall, as rapidly as deemed practicable, issue all rules specifically authorized or required by statute in order to implement, complete, or make operative particular legislative provisions." S. 918 goes even further and requires that "within one year after the date of approval of any statute . . . all rules specifically authorized or required by such statutes" shall be enacted. And as a final touch it provides that "No agency . . . shall act upon unpublished rules, instructions, or *statements of policy*. . . ." [1]

It is not the least amazing aspect of this almost pedantic insistence upon the exercise of power by generalization rather than *ad hoc* adjudication that it comes from lawyers who have been trained in a system which prides itself upon its power to adapt the law to changing circumstance by a close scrutiny of concrete cases. It would be hypocritical to maintain that such a method can adequately take care of all lawmaking needs. It is slow, unpredictable and, as it may single out one or another person for judgment, it may be arbitrary. There can be no doubt that in an economy which depends as ours does upon accurate planning and calculation of risk, regulation by legislation must be a dominant mode. It still remains true that the future stream of experience can never be completely mastered by preordained rule. Mr. Clyde B. Aitchison of the Interstate Commerce Commission very wisely said in connection with these facts: "The purpose of delegation of authority to the Commission is, in part, that the Commission may by investigation and research, and after hearing all parties, evolve and give force to the appropriate economic principles which should give life to the formal words of the statute. If these economic principles were already clear, and if they were known and accepted, there would be no necessity for referring the subject to the administrative agency. . . . There is grave danger in the premature crystallization of theories into theorems before they have been treated pragmatically." It is never possible, nor would it be wise if it were, to state in advance all of the

[1] Italics are author's.

important determinants of any judgment that an authority may be asked to make. Such an attempt would quickly lead to sterility and inflexibility. Justice Holmes in a much-quoted passage, referring to a challenged tax assessment, said: ". . . the action does not appear to have been arbitrary except in the sense in which many honest and sensible judgments are so. They express an intuition of experience which outruns analysis and sums up many unnamed and tangled impressions; impressions which may lie beneath consciousness without losing their worth. The Board was created for the purpose of using its judgment and its knowledge." [1] To be sure, there may well be cases where an exercise of rule-making power is possible and desirable, and the authority has failed to respond. The reason may be ignorance, laziness, or the desire to escape responsibility and control with respect to a rule which might, if issued, be justifiably attacked. But the treatment for such pathology should not be the enunciation for the whole range of government of principles which are distorted and impractical. If a particular agency is escaping responsibility for an unwise or illegal policy by applying it *sub rosa*, the appropriate procedure is through congressional action or otherwise to smoke out the malefactor.

There are situations where the reluctance to reveal instructions or policies tentatively formulated has in some measure been due to a feeling that the policy has not been adequately tested by the agency, or that its application should be restricted to special facts. This, for example, is an admitted practice in connection with the work of the officers of the Bureau of Internal Revenue who are engaged in the initial informal action upon taxpayers' obligations. There is increasing realization of the importance of informal proceedings in settling amicably and inexpensively the great mass of administrative problems. Where the testing officer acts upon unrevealed instructions, the taxpayer is not able intelligently to meet the case made against him. To that extent, a limit is placed on the usefulness of informal negotiation. It is not easy to resolve this conflict of objectives. Indeed, a requirement of complete disclosure of all policies, however tentative, would not necessarily further the availability of informal proceedings, since the authorities might grow reluctant to settle matters which depended on the formulation of a rule for which they were not ready. The majority bill requires publication of policies only "where they have been adopted"—words of somewhat uncertain significance which, however, may be the best compromise possible. At this point it might be mentioned that the minority bill is full of directions so hedged about with qualifications that its application depends largely upon its voluntary acceptance by the agency. For that reason, the majority has invidiously characterized this minority bill as "hortatory." I think it may be said that the majority suggestion with reference to the publication of policies "where they have been adopted" has something of that quality. I feel, however, that exhortation may usefully be embodied in a statute. A vast amount of legislation which courts label as "directory" rather than "mandatory" is of this nature, and it is not argued that for this reason the legislation serves no purpose. It is addressed to and has value for the conscientious officer, and for the conduct of others it may provide a basis of criticism.

All of the bills in question do provide or at least attempt to encourage greater publicity than has heretofore been the case as to personnel, procedure, and whatever rules have in fact been promulgated. This practice is all to the good, provided that it does not mean to compel the current publication of a great mass of constantly shifting detail. It should be recognized that the public deals with administrative agencies, as it does with other organs of government, primarily through lawyers. It is, in my opinion, a rare case, even today or in the past, in which a

[1] *Chicago, Burlington & Quincy Railway Co.* v. *Babcock*, 204 U.S. 585, 598 (1907).

lawyer with a bit of looking cannot secure the information necessary to represent his client.

Hearing

THE Supreme Court of the United States regards the distinction between judicial and legislative action as a fundamental determinant of a right to hearing. Due process requires that one whose interests are singled out for judgment must be heard by the judge at some time before judgment is final. But long before this proposition was announced it was the law that officers might act without hearing where the public health or safety was imminently threatened and answer afterward in a judicial action for any mistake. Such procedure satisfies the proposition provided that the question of mistake is open for *de novo* determination on the merits. At least the Supreme Court has demanded that much. A number of state courts hold that only the reasonableness of the officer's action is in question and that view, encouraging as it is to official action, is thought to be more liberal and progressive. To my mind it places the risk on the individual when it should be on the state. To be sure it will be the officer rather than the state who pays, but nothing stands in the way of his indemnification.

On the other hand, the Supreme Court holds that where administrators, delegates of the legislature, exercise rule-making functions, the interests affected are not constitutionally entitled to hearing. It is not that these interests are unworthy of regard but rather that it is thought to be impractical to require notice to large numbers of persons. But the interests to be affected may be determinate and notice entirely practical; the administrative body is appointed rather than elected, and though sometimes representing interests, it may entertain technical notions quite opposed or indifferent to lay attitudes. Legislators and administrators have both recognized the value of formal procedures in rule-making activity. In a great number of instances statutes or regulations make provision for notice and hearing; in other instances, the administration circularizes its constituency, allows opportunity for comment, or invites representatives for more or less formal consultation. In some but very few instances rules are formulated without prior notice of any sort.

The Logan-Walter bill provided that no rule or regulation could issue without public hearing. Though the bill was riddled with exceptions, Attorney General Jackson in his opinion to the President was able to show that it would preclude the issuance of many rules where speed and prior secrecy were of the essence. The American Bar Association in making this proposal could point for support neither to tradition, to general principle, nor observed need. The studies of the Attorney General's Committee revealed important instances in which rules were arrived at through consultation but without hearing. It did not appear that anyone among those affected protested the procedure as unfair or inadequate to achieve well-informed results. Where individual fault or liability is in question, the conclusion must be reached solely through the medium of evidence known to and rebuttable by the parties; a hearing is by common consent the best assurance that these conditions will be met. In matters legislative the issues are normally not so well defined; the criteria by which the results may legitimately be reached transcend matters of evidence; the legislator may draw upon imperfectly articulated experience; he may consider policy; he must resolve conflicts to which expediency denies a public forum. A hearing may be fruitless, uninstructive; it may occasion delay without compensating advantage, obstruction which more discreet procedure would make tractable. It may be granted that in most instances a hearing will do no harm and may do much good: it promotes the sense of participation, provides a vent for feeling and distrust, allays the suspicions aroused by secrecy and haste; in a word, it broadens the bases of consent, so vital to successful enforcement. Today, indeed, hearing is the rule, even to such an extent as to make observers wonder whether it is

not overdone out of perfunctory caution. To make the perfunctory the universal serves only to increase the dead weight under which aged bureaucracies are apt in time to succumb.

We should next mention a type of situation where, unfortunately, our judicio-legislative dichotomy indicates conclusions which neither legislatures nor courts desire to accept. I refer to situations in which quite clearly the interests of named persons are at stake, such as the grant or the revocation of a license. It would offend even the most latitudinarian semanticist to call this administrative action quasi-legislative. Yet this action has been carried on without hearing for centuries antedating the enactment of due process clauses. The great volume of cases and the sense that the would-be-licensee is asking for a favor perhaps explain it. The latter reason does not jibe very well with the notion that in most instances licensing is not so much the grant of privilege or favor as it is a reasonable mode of regulation. It is at least doubtful whether the state could prohibit the plumbing trade or treat entrance into it or expulsion from it as a matter of arbitrary grace. That being so, the exclusion or expulsion of an individual from the trade might be classified logically as a judicial act. But the logic of due process is in considerable measure the logic of tradition, which mercifully takes account of degrees of difference which our sterner categorians treat as inadmissible. The New York Court of Appeals salves its sensibilities by introducing a third category of "administrative acts" and from this beginning holds that there is no constitutional right to hearing either on matters of exclusion or expulsion. Some latter-day courts, however, feel otherwise about expulsion cases particularly where large investments are at stake. In most of the federal licensing functions, where the cases are comparatively few in number and the economic outlays large, the Congress has provided hearing for both exclusion and expulsion cases. The practice in the states shows great variety.

Municipal licensing functions dealing with a great mass of common callings and activities continue as a rule to be exercised summarily. It would not, I feel, be impracticable to grant a hearing upon request where the license is to be otherwise refused; and more clearly it would not be impracticable to grant a hearing prior to revocation. In the latter situation, hearing is coming more and more to be the rule. It should not be overlooked, however, that even in the absence of hearing the common law provides some measure of review through one of the prerogative writs. I cannot speak for all jurisdictions, but in New York at least the courts have a tolerably good nose for arbitrary action and, just because of the absence of administrative hearing, are inclined in a proceedings in the nature of mandamus to give a full hearing. The minority bill makes provision for hearing in all cases involving "complaints, applications or proceedings (without distinction between licensing and other forms of proceedings) involving named persons or a named res." Such provision would work a revolution in state administrative practice. Its effect on federal practice would be more doubtful since, as already noted, provisions for hearing in the cases described by the formula are almost universal.

The administrators who testified were able to point to a few instances, some minor, some major, which would be covered where there is at present no statutory provision for hearing. No reasons have been suggested by the proponents of the bill why there should be hearings in these instances. Indeed it is doubtful that they knew of them. The production of changes, which would be fortuitous, unforeseen, and even unwanted as a result of the promulgation of unexplored generalizations, reveals to my mind an unfortunate irresponsibility. It is unfortunate because it destroys the credit of persons whose well-considered proposals would force respect. It strengthens the intransigence of their opponents and obstructs fruitful compromise.

The Process of Decision

THERE is today one basic problem which deeply troubles persons in all camps. That is the organization of the judging function in matters which have been the subject of hearing. With respect to almost all other details of the administrative hearing, there is no bona fide debate. It is not unusual, to be sure, to hear an embattled administrator indignantly proclaim that the conservatives are attempting to saddle administrative hearings with the antiquated rules of evidence and procedure of the courts. And it is incumbent upon every professor of the subject to point out how disastrous such a conclusion would be. But this is a battle long since won. Furthermore, in this respect the stereotyped contrast between courts and administrative tribunals is of declining validity. In the large sense, both organizations are set in the same environment of relationships and ideas. I do not deny that, particularly in the field of evidence, there remain a number of tough resistances to modern conceptions of rational proof. The system of pleading, however, has been drastically reformed through the conception that its function is to give notice and define the issues. In this respect, at least, the Attorney General's Committee agreed that administrative tribunals had still something to learn from the courts. It was found that in a number of agencies notices of charges or of matters set down for hearing define the issues in the uninformative generalities of the statute. The Committee in its report called upon the agencies to make their notices and pleadings more circumstantial so that the party might be advised of the propositions he was being called upon to defend, and so that time and money might be saved through the elimination of proof with respect to matters which were not essentially in issue.

The great cry against administrative adjudication is that it violates the tradition of a judge independent of the prosecuting authorities. Judge Cardozo in a case holding that a constitutional judge could not be empowered by the legislature to exercise functions combining prosecution and judgment, stated: "Centuries of common law tradition warn us with echoing impressiveness that this is not a judge's work." [1] The tradition is probably not quite so ancient nor quite so universal as we sometimes think. Even in late Tudor days, the king's judges during the course of a criminal trial ruthlessly pursued and harried the criminal defendant who stood before the bar quite naked of assistance from counsel or any privilege against incrimination. Juries were browbeaten by the court to bring in verdicts for the Crown. But of course it was the jury and not the judge which finally determined the facts. Granting the usual subservience of the jury, we must still regard it from the historical point of view as an amazing and unique institution. Everywhere on the continent the dawn of modern times found the judging function firmly in the hands of royal judges who regarded themselves as the instruments of prosecution. Only in England did there arise and persist a focus of judgment, in form and potentially in substance independent of royal officers with prosecutory intentions.

The English tradition arose in connection with felony prosecutions. It was by no means a universal rule. Justices of the peace, who up until the nineteenth century were the almost exclusive organs of county government, enacted ordinances dealing with taxes and with all manner of petty offenses, instituted prosecutions, and judged them. This combination of functions seemed to have excited no doctrinal disapproval, at least until the beginning of the nineteenth century. The justices finally ran afoul of public opinion in their rigorous and class-minded application of the hated game laws against their humble neighbors. There can be no doubt that the combination of functions made these laws even more hateful, but the attack was primarily upon substance rather than procedure. I cite these instances not to throw any doubt upon the importance of the central common law doctrine of separation

[1] *Connolly* v. *Scudder*, 247 N.Y. 401, 160 N.E. 655 (1928).

but rather to show that it has limits. The doctrine itself is based on a deep and ineradicable distrust of the fairness of a judge whose previous connection with the case gives him special animus against the defendant. Because the doctrine is held as an article of faith and because that faith is closely associated with the trust and pride of the common man in his legal tradition, the validity of the principle is not to be gainsaid nor its importance to be minimized.

It is a truism that the phrase "administrative powers" covers activities of widely different nature. Rule-making activities have in them very little of the prosecutory. In a remote sense, a new rule may involve condemnation of old conduct and require readjustment. But this is true of the action of the legislature itself, and it has never been thought that the function of legislation should be distributed among a number of authorities. All the activities of the Interstate Commerce Commission, however, cannot be described quite so simply. In form, many questions of reasonable rate arise on the basis of a charge that the rate is unreasonable combined with the demand for reparation. It should be noted, and it is often overlooked, that these charges are neither instituted nor prosecuted by the Commission, the burden being upon the shipper to make his case. But the Commission is interested in the final result, not so much as it bears upon the matter of reparation as upon the making of a future rate, and being so interested may produce testimony in support of positions different from those of either party. I think that here again it will be admitted that there is at present in the Commission almost nothing of the prosecutory attitude nor of the apprehended consequence of that attitude which has given life to the tradition. On the other hand, there are very positive reasons for the unification of these functions in a single agency. The Commission is charged with the responsibility for the continuous regulation of an intricate mechanism. Its power to observe and to initiate action upon the basis of its observation is a condition of its informed and effective judgment. Its judgment, again, is only a point in a stream of operations, becoming a further fact for observation and so for further judgment. The very essence, then, of its effectiveness as an administrative body is its unity of powers.

The licensing functions, as there has been occasion already to observe, are somewhat *sui generis*, both from the point of analysis and of tradition. Obviously the principle of separation in question never was applied, for, as we have seen, there was no hearing at all. Analytically the judgment of an application for a license seems to involve little preliminary prosecutory intention since it is the applicant rather than the administration who takes the first step. In particular cases, of course, where, as with the radio broadcasting licenses, the license is of short duration and must be periodically secured, there may in fact have developed in the course of the relationship an animus against the applicant. A revocation of a license, on the other hand, comes closer than anything we have so far considered to prosecution. Yet, to repeat, tradition has never so regarded it. The gap between the death which followed the conviction of felony and the possible, at least temporary, loss of a trade which followed revocation was apparently so wide as to fail to suggest the similarity. The growth of the licensing system as a form of royal favor, the need or habit of exercising economy in the lesser jurisdictions, such as the justices of the peace and comparable authorities, tended to encourage the prevailing custom.

On the other hand, as in the case of the Interstate Commerce Commission, there are usually important positive factors for unity of power. The licensing function, particularly in such federal fields as radio, power, and alcohol, is, like the reparation judgment in the commerce field, a point in the continuous fabric of regulation. Put on the very lowest terms, there can be no doubt that the combination of functions makes it easier and more likely that a coher-

ent and consistent policy of regulation will be evolved. We must beware of acting upon the proposition that ease and simplicity justify the violation of fundamental safeguards. But where our tradition has not previously in terms covered a situation, these criteria are valid arguments against a merely doctrinal extension of what the tradition may be thought logically to imply.

It is in activities such as those of the National Labor Relations Board and the Federal Trade Commission that we come closest to the criminal law. The similarity is not complete since the judgment is in form an injunction against further illegal conduct rather than penalty for past conduct. The requirement in many Labor Board orders that the employer reimburse employees for loss suffered from discriminatory dismissal, or for dues checked off to a company-dominated union, approaches nearest to a penalty. It is precisely with respect to the work of the Labor Board that there has been the most vigorous objection to the combination of functions. The point is usually made that the real basis of this objection is dislike of the substance of the law. This I believe is true but in itself hardly a valid reply. It would be a novel and dangerous argument that those who do not like the substance of the law are not entitled to object to the absence of proper procedure in its application.

It is perhaps a more valid approach to the objections which are taken to the Labor Board procedure to ask whether the objection is so much to the organization as it is to the personnel. Our tradition rightly interpreted is that the judge should be neutral toward the question of whether the specific defendant is guilty. It is a perversion of that tradition to demand that the judge be neutral toward the purposes of the law. It is a *sine qua non* of a good Administration that it believe in the rightness and worth of the laws which it is enforcing and that it be prepared to bring to the task zeal and astuteness in finding out and making effective those purposes. Such an Administration would no doubt be under attack regardless of the form of administration. It must be admitted that there is no clear line between righteous zeal and administration in excess of power. No law can be completely explicit in its intentions, and it is a fact for good and for bad that a zealous man, in forming his own pattern of the legislative purpose, must add to it some purposes of his own. It must also be admitted that the zealous man is more apt to resolve doubts against a defendant than for him. This line of argument cuts both ways. It suggests, on the one hand, that the character of personnel rather than its organization is the crucial factor. It suggests, on the other, that the properly zealous man who is necessary for good administration may find greater opportunities to pervert his zeal in proportion to the greatness of his powers.

There is still another qualification which, it is generally admitted, works to some degree against the criticism of excessive concentration of power. In a large organization handling hundreds of matters a year, unity of control is in part a formal conception rather than a constant reality. It operates along broad lines rather than in each particular case. Inevitably there must be a division of function, a measure of autonomy. It is possible, and in certain organizations usual, to insulate from each other the various units engaged in investigation, advocacy, intermediate judging, and review. It is possible to isolate the personnel engaged in the issuing of complaints from all other personnel. The issuance of complaints may be performed under general instruction from the heads of the agency so that in most cases the agency will be entirely unaware of a particular case. It is rightly felt that with such a division of function, predisposition in the ultimate authority or in the hearing officer (insofar at least as it is based on combination of functions) is considerably reduced. It must at the same time be admitted that it is not eliminated in quite the same degree as when the judge does not regard himself as part of the prosecutory organiza-

tion and is not moved by the prevailing *esprit de corps.*

How, then, shall this problem be solved? First, it might be said that in a practical sense it has already been solved. Congress has deliberately adopted, to take for example the case of the Labor Board, a unitary procedure because no less power was sufficient to impose upon the employing group its intention that that group should bargain collectively with the representatives of employees. The tradition was not necessarily thereby flouted since, put at the highest, the tradition was ambiguous for such a case. Neither action nor judgment was in form criminal, and regulations occupying roughly an equivalent position in the scale of legal values had been carried on through similar process not only here as with the Federal Trade Commission but in England through justices of the peace. One might on the other hand maintain, as does the minority of the Attorney General's Committee in its dissenting report, that the unitary process is valid only for a first stage in which a new and unpopular law must be imposed upon violently opposed groups. Thereafter enforcement should be placed in the hands of agencies which satisfy to a greater degree the generally prevailing notions for just procedure.

There is precedent for such a view. The Star Chamber, for example, developed through unpopular procedures a whole range of misdemeanors which it then bequeathed to the regular courts. Coming nearer home, the Wisconsin Labor Board by reason of new legislation no longer exercises any prosecutory function at all. It acts automatically upon any sufficient complaint and requires complainant to carry the burden establishing the case. This is a drastic solution. It diminishes the opportunities for the play of whatever prejudice is thought to inhere in the prosecutor-judge combination. But it removes the enforcement of the law entirely from the field of public prosecution. To that there is no objection upon principle. Private responsibility for the vindication of self-interest promotes vigor and independence. And if the private party is equipped to prosecute his interest and may be expected to do so, the over-all social interest is secured as well. But it may be questioned whether labor has achieved a position which makes at least a reserved power of public prosecution unnecessary. The Pennsylvania law strikes a compromise, placing responsibility primarily upon the private party, by providing that "in addition thereto or in lieu thereof . . . if the Attorney General sees fit, by a Deputy Attorney General especially assigned . . ." the public may prosecute. Minnesota has reverted to the traditional process that a private party bring a suit in equity, which is the procedure under the federal Railway Labor Act.

The majority of the Attorney General's Committee proposes to solve the problem of the combination of functions by strengthening the position of the initial hearing officer, most usually called the trial examiner. It proposes legislation which will provide that each agency shall nominate its hearing officers, that they shall be approved by a new independent agency, the Office of Federal Administrative Procedure. The hearing officer will be paid between $5,000 and $7,500, hold office for seven years, and be removable only on conviction of charges after trial under the auspices of the Office of Federal Administrative Procedure. The minority members of the Committee provide for a twelve-year term and renewal of the term without the concurrence of the agency which he serves. Justice Groner believes that the hearing officer should be appointed by the Office of Administrative Procedure alone and be assigned by it to cases as called for.

These hearing commissioners must be used in any case where the rights of a named individual are adjudicated upon hearing (unless one or more of the heads of the agency presides). In a matter heard by a commissioner an initial decision must be made by him, unless he certifies a novel question, or unless the agency "on petition of any private party and for good cause shown" brings

the matter before itself for determination. The determination of the hearing commissioner may be reviewed by the agency itself upon objections or upon motion of the agency. The statute as proposed by the Committee does not limit the authority of the agency to substitute its own judgment but does require it to state its reasons where it differs from the hearing commissioner. The statute does, however, suggest that the agency *may* limit review to whether the findings of fact are "clearly against the weight of evidence," or in the words of the minority, "clearly contrary to the manifest weight of the evidence." And the report indicates that the hearing commissioner should not be otherwise overruled. It suggests that the relationship should to a considerable extent be that of trial court to appeal court. "Conclusions, interpretations, law, and policy should, of course, be open to full review. On the other hand, on matters which the hearing commissioner, having heard the evidence and seen the witnesses, is best qualified to decide, the agency should be reluctant to disturb his findings unless error is clearly shown."

The trial examiner is a usual and necessary officer in most of the federal adjudicatory agencies. The reason for his existence is the simple one that the amount of work is too great for the responsible members of the agency themselves to perform in the first instance. He is thus comparable to the referee who in our equity courts sits to hear evidence in long and complicated cases and reports the testimony and his conclusions to the judge, who is himself to make the decision. From this point of view the office is of very considerable importance. Some such device is necessary if speed, conventionally stated as a desideratum of administrative action, is to be secured. But more than that, it can, by allowing routine matters to be disposed of at the lower levels, save the time of the agency members for the decision of matters of policy and general direction.

But to date, the institution has in many cases not been organized to achieve even these advantages. Some of the agencies, the Federal Trade Commission being usually cited in this connection, regard the trial examiner as a mere conduit of the testimony and do not empower him even to make rulings during the hearing necessary to the progress of the trial. The defense of this position, and there are those who still do defend it, is that Congress has entrusted decision to the agency members, that by hypothesis no one else is competent to decide any issue, and that delegation would involve a shirking of responsibility. Others take a somewhat intermediate position, admitting that the intelligence of the trial officer should be brought into effective operation but that under no circumstances should his judgment be final without at least the *pro forma* approval of the agency. When the whole meaning and interpretation of a new law are still to be made, every decision is a decision for the heads of the agency itself. During this period their energies may be overtaxed, speed of dispatch must be foregone, and the personnel must be satisfied with a minimum of responsibility. But if the administration is competent, the broad lines of policy will be worked out in the course of time and there will be no need of sacrificing values to a fetish of responsibility. It has long been obvious to the Interstate Commerce Commission, for example, that the sheer volume of matters for disposition made it impossible for the Commission as a whole to take part in every case. The Commission has established divisions of its own members but it has gone further and made it possible to dispose of many matters upon the authority of persons not members of the Commission.

From this point of view, then, the proposal of the Attorney General's Committee that the quality of trial examiners be of a uniformly high standard and that their responsibility be increased can give rise to very little legitimate controversy. But these considerations, I take it, are only a secondary consideration for the proposal. Its primary emphasis is on the *independence of the hear-*

ing officer vis-à-vis the agency. The idea of the proposal is to leaven the lump of power by introducing into it an agent which may radiate a gleam of diversity. The fundamentals of the process, the unity of initiation and judgment, remain, but there is place within it for a sort of official critic who is in part, though not completely, removed from the power of those whom he must criticize. Thus, though the operations which the trial examiner will perform are very much those which he has always performed, in one respect at least the function would be very different. The proposal is quite avowedly a response to objections to the unification of power and an admission that the objections are not without foundation. The Committee, however, believes that it would be impracticable to divide up all agencies into prosecutory and judging groups if for no other reason than the enormous increase in expense.

In this observation and in its proposal, the Committee somewhat surprisingly by implication takes the position that in this respect all administrative agencies must be governed by a single rule. The Committee itself has done a splendid job in pointing out in general the great diversity of federal agencies and in particular the fact that only very few of them involve any prosecutory function. It may be surmised that the proposal is thus general because the Committee or a majority of it did not wish to make invidious distinctions, however logical, between agencies. Upon the Committee's own analysis, it would be only for such agencies as the National Labor Relations Board, the Federal Trade Commission, and possibly the Federal Communications Commission that an "independent officer" would be needed to correct an assumed possibility of bias due to a combination of prosecutor and judge. Yet these were the very agencies most under attack and to have named them might have discredited them as such.

An analysis of the proposal reveals the rather paradoxical conclusion that prima facie validity is attached to the findings of the inferior trial officer as against his superiors who are responsible for administration and who by hypothesis are more competent than he. The answer to this may be that only timid commissions will be disturbed by the presumptive qualities of the trial examiner's judgment where their own judgment would as an original matter be otherwise. Furthermore, it may be said that this prima facie effect is valid only for facts whose proof depends upon demeanor evidence, and that as to these the trial examiner is more competent. But to take Labor Board controversies, for example, the line is a fine one between the fact and the inference, between the particular which rests in demeanor and the total fact which rests on all the materials for judgment. Unless there is a real problem to be solved, there can be no reason for applying to an agency principles which are otherwise inappropriate.

To my mind, for example, nothing is gained by applying this proposal to the Interstate Commerce Commission since the prosecutor-judge problem has not arisen in this body and there is perhaps, although not certainly, something to be lost. To be sure the situation with respect to the Commerce Commission is not the sole criterion for the legislation in question, even simply as it affects the Commission. A complicated equation might be proposed. There is a need for reform in one agency. The reform is not solely important for its relation to the agency in question but, as with so many reforms, is called for as a token of the responsiveness of the government in general to possibly valid claims. On the other hand, the reform, if accomplished directly and in isolation, is politically inadvisable, perhaps because it may unduly compromise another reform, offend those with equally valid claims, or by confessing error imperil the credit of the government. To accomplish the reform by a rule broader than necessary may incidentally and fortuitously produce some harm, but then such a consequence may well be the effect of almost any reform. Some such process probably underlies the proposal of the

Committee and we cannot condemn it out of hand if we are to think of the government as a functioning whole operating within specific time conditions rather than a disconnected congeries of power organizations, each entitled to develop its own uniquely determined forms.

By testing the value of the proposal, even for the agencies which we may surmise were in mind, we are confronted with the paradox already suggested that the members of the board, in whom responsibility is placed and who are chosen for special competence, must approach a case for the first time on the assumption that the examiner's judgment is prima facie correct. Perhaps this formula does not intend to express anything more than the deference which one man should pay to the opinions of another. And if the "independence" of the trial examiner serves simply to encourage him to make his own judgment, the proposal seems a valuable one. It is, however, the suggestion that in case of doubt the agency members and the world at large (and perhaps the courts?) are to prefer the examiner's to the members' judgment which violates in some measure the principle of agency responsibility. I would be willing to admit, however, that this analysis is too refined and overemphasizes the significance of form. It is perhaps amusing in this connection that in the opinion of some labor lawyers, at least, the present trial examiners of the National Labor Relations Board are more prone to find for the employee than are the members of the Board. The employers whose interest might be thought to have been in the direction of some such reform of the Board procedure may at this moment be in some doubt whether procedural reform is what they are after. One is driven back again to the painful question of the value inherent in a form irrespective of the substantial results which are hoped for through its operation.

A further problem remains which, to a considerable extent, is involved in the answer to that which we have just considered. The legal profession became for the first time acutely and uncomfortably aware of it in the judgments of the House of Lords in the famous Arlidge[1] case. It was this case which brought the great Dicey in his declining years to the unhappy realization that even in England there existed that continental abomination called administrative law. The Arlidge case involved an order of the Home Secretary, or more realistically of his department, ordering Arlidge to repair his house. An inspector had taken evidence on the spot and had then transmitted the record and his conclusions into the great anonymous maw of the department, out of which there had issued an order bearing the signature of the Secretary. It was held that Mr. Arlidge was not entitled to know what recommendations the inspector had made nor by whom they had been finally disposed of. He was entitled to a fair consideration, since it would not be assumed that Parliament could have intended otherwise. But fairness or "natural justice," to use a phrase to which some of the opposite-minded judges appealed, was not equivalent to established judicial forms. Its substance was satisfied in the hearing provided before the inspector, in the right to address remarks to the department, and in the requirement (presumably) that the order have some relation to the facts and be such an order as was authorized by the statute. Further than this, the court argued, it could not require a department of state to depart from what would otherwise be its procedure. Parliament in delegating the power to the Secretary meant by that the organization of which he was the responsible head, and so indicated as the appropriate procedure the usual procedure of that organization.

The Supreme Court of the United States in the famous Morgan[2] case was unwilling to accept the relaxed notions of the House of Lords. That case involved the fixing by the Secretary of Agriculture under the Packers and Stockyards Act of maximum rates for services rendered by certain named

[1] *Local Government Board* v. *Arlidge* [1915] A.C. 120.
[2] *Morgan* v. *United States*, 298 U.S. 468 (1936).

stockyards. The statute provides very simply that if "after full hearing . . . the Secretary is of the opinion that any rate . . . is or will be unjust, unreasonable, or discriminatory, the Secretary . . . may determine and prescribe what will be the just and reasonable rate . . . ." The claim was made that the Secretary or Agriculture had signed a decision without having heard argument or without being familiar with the record. The Court regarded the proceeding as judicial in nature, involving as it did the use to which the property of named persons could be put. The Court held that the "full hearing" provided by the statute required that he who is designated to decide should at least be familiar with the record. The Secretary, the Court held, was designated as a person, not as a department. This conclusion did not mean, it hastened to add, that the Secretary need hear oral argument nor that he read every word of the record: he might rely upon his subordinates for an understanding of its content. The Morgan decision evoked consternation and considerable contempt. It was thought to proceed upon a fine, possibly a willful disregard of administrative realities. The Secretary of Agriculture, it was pointed out, could not perform his multitudinous functions in person, and what the House of Lords thought safe for Englishmen should be safe enough for us.

But the true issue was not between the exhaustion of the Secretary and the collapse of administration. The issue was whether the tasks should be performed anonymously in the name of the department or should be given to named persons who had time to do them. Against the latter alternative it has been argued that the decision would lose the weight that it might otherwise have from bearing the sign and seal of high office. I think that that advantage is too tenuous to offset the satisfaction which the citizen secures of appealing directly to the mind of the judge. Also it is more stimulating to the administrative personnel to exercise ostensible power. The sacred administrative "realities" so glibly appealed to may be just the prettier modern name for the endless involvement and faceless doings of that horrid specter, bureaucracy. I suggest that the decentralization, the introduction of greater responsibility at various levels, which is implied in the emphasis of the Morgan case, may increase rather than decrease the health and vigor of administration.

The Attorney General's Committee has adopted the theory of the Morgan case unqualifiedly. "The heads of the agency should do personally what the heads purport to do." Where the decision has been made originally by a trial examiner, "review should be given by the officials charged with responsibility for it, and the review so given should include a personal mastery of at least the portions of the record embraced within the exceptions." It will be seen that this position reinforces from another viewpoint the increased emphasis on the importance of the trial officer. The agency head by proper delegations of his functions can acquire personal mastery of the important matters which will remain for his determination by way of review.

The minority of the Committee have sought to embody this conception in their bill by providing that hearing officers "shall personally master such portions of the record as are cited by the parties." This statutory suggestion seems gratuitous. The Morgan case already indicates to conscientious officers what their duty is. If this section lays the basis, as it was one time thought the Morgan case did, for haling the members of government and administration into court to examine them on their process of decision in particular cases, it is to be unqualifiedly condemned. Such a practice could obviously serve to obstruct government.

Evidence, Official Notice, Cooperation of Staff

CLOSELY related to the foregoing is the problem of securing the materials (evidence) for decision and the use of technical assistance in interpreting the material. A

preliminary concern is the practice of issuing subpoenas. The Committee has criticized certain agencies for supplying their own staff with an unlimited number of subpoenas and requiring the private party to make an elaborate showing of his need. This discrimination has no doubt been exasperating to those dealing with the agencies and the Committee suggests that the agency officer as well as the private party be required to make a showing as to its need. The Logan-Walter bill provided that subpoenas issue simply upon request with no other showing than was required by the rules in United States district courts; but the subpoenas of administrative agencies run throughout the United States, whereas those of the courts run within a very narrow compass. Under these circumstances it is proper that there be some protection for witnesses. The Committee has made no legislative proposals with respect to subpoenas other than a suggestion for further study by the Director of Federal Administrative Procedure, but the minority provide that administrative subpoenas authorized by statute "shall be issued only upon request and a reasonable showing of the grounds, necessity and reasonable scope thereof, and shall be issued to private parties as freely as to representatives of any agency." I think that a general provision of this sort might well be adopted without prejudice to any further rules that the director may suggest.

The crux of the evidence problem is the so-called problem of judicial notice. The Committee believes that it is clear that all information having an immediate bearing on the particular case, which it calls "litigation" facts, should be considered only if affirmatively placed in the record. The agency's file of the case should not be otherwise available to the adjudicator. "But if the information has been developed in the usual course of business of the agency, if it has emerged from numerous cases, if it has become a part of the factual equipment of the administrators, it seems undesirable for the agencies to remain oblivious of their own experience and strip themselves of the very stuff which constitutes their expertness. It appears far more intelligent, if fairness to the parties permits, to utilize the knowledge that comes from prior acquaintance with the problems. Laborious proof of what is obvious and notorious is wasteful; . . ." Yet matter of this sort which might appear relevant to the adjudicator may be disputable and may not control the case. The parties against whom such knowledge is used should have an opportunity of demonstrating this fact. Consequently, although it should not be necessary to "prove" it in the traditional fashion, the party should at some stage in the proceeding be notified that this knowledge will be used and given an opportunity, if he desires, to rebut it. I think this handling of the problem is sound and demonstrates that the need for elaborate distinctions as to what is and is not official knowledge can be completely cut under by a procedural device of the sort suggested.

I am not sure that this view is accepted by the minority. Their bill provides that the adjudicator "may utilize the aid of law clerks or assistants (who shall perform no other duties or functions) but such officers and such clerks or assistants shall not discuss particular cases or receive advice, data, or recommendations thereon with or from other officers or employees of the agency or third parties, except upon written notice and *with the consent of all parties* to the case or upon open rehearing." [1] Of the view that "all specialized and technical advice available anywhere should be utilized in making the decision" the minority say it "is plausible but entirely subversive of every fundamental notion of fair procedure." I agree, as the majority agree, that the case should not be decided on material of which the parties do not have notice, but I cannot agree that the adjudicators should be cut off from securing such material after hearing unless they have the consent of all the parties. Otherwise matters not properly understood at the hearing cannot be either

[1] Italics are author's.

detected or remedied. If the preparation of a case requires the application of technical understanding, it would appear that its decision equally requires such understanding. This solution makes it necessary, to be sure, to rely upon the good faith of the adjudicator to reveal any additional information received, but there are points at which, in the administration of justice even by judges, good faith is the only safeguard. The minority proposal does permit the hearing commissioner to talk to and use "law clerks or assistants," though literally construed it would not allow those assistants to secure aid from each other; on the other hand, there is apparently no limit to the number of assistants nor to the kinds of skills that they may have so that the proposal may mean no more than that the technical staff, all of whom can be regarded as aiding the hearing officer, should not discuss the case with the prosecutory or investigating officers. If so understood, the provision would be less objectionable, but this is not the meaning which the members have attributed to it in their appended note.

Judicial Review

THERE was a time not so long ago when the principal hope of those who would control and cripple administrative action was the judiciary. The English judiciary has for hundreds of years assumed the power, an attribute of its derivation from the King's Council, to make the action of all men, and no less of public officials, responsible to "the law," be it the legislative or its own version. Judicial action might take the form of awarding compensation against the officer for damage illegally done (trespass), or order him to act (mandamus), or correct or curb him in what he was about to do (certiorari, injunction). These powers the American courts have taken over and reinforced by finding them in the constitutional guarantee of due process or the grant of "judicial power" to "the judiciary" (i.e., the regularly established, traditionally conceived courts). Most modern statutes setting up administrative tribunals provide explicitly for judicial review. The Interstate Commerce Commission, the Federal Trade Commission, and comparable state tribunals found sitting over them judges ultramontane in economic conviction and jealous in guarding against loss of their monopoly. The judges ate away the substance of the administrator's powers by interpretation of the statutes and by substituting their own conclusions of fact for those of the administration. Students and practitioners fought against this judicial rear-guard action in the legislatures, in the law schools, and in learned journals. For the moment the judiciary is more circumspect: the older judges have been chastened or have sullenly subsided; many of the newer judges regard themselves as partners in the administrative state. Judicial review is no longer the great hope of the unconvinced.

Shrunk to its proper proportions, the institution of judicial review is basic to our conception of democratic government, indeed to the conception which has prevailed until recently in all of the democratic countries. By judicial review I mean, of course, a review by some body (of whatever name) relatively independent of him who purports to exercise power.

The objective of judicial review, says the Committee, "is to serve as a check on the administrative branch of government—a check against excess of power and abusive exercise of power in derogation of private right." The Committee notes that despite a certain variety in the provisions defining the scope of judicial review, the Supreme Court today at least is inclined to adopt a theory with respect to all agencies that their decisions must stand unless there is no reasonable support for them in the record. It is quite likely that even if the courts were instructed to review the "weight of the evidence," the courts would continue to use the same theory of review. And if they were to adopt a broader scope of review, it would turn administrative tribunals into "little more than media for transmission of evi-

dence to the courts. It would destroy the values of adjudication of facts by experts or specialists in the field involved. It would divide the responsibility for administrative adjudications." If this judgment is slightly excessive, it is still true that it would enable the court as and when it wished to substitute its conception of policy for that of the administrative tribunal and so threaten the working out of a consistent system of regulation.

The minority admit that judicial review "should not be too broad and searching or it will hamper administrative efficiency," but "it should not be so restricted or so devitalized as to fail as a check upon palpable administrative error or abuse of power." They conclude that the "courts should set aside decisions *clearly* contrary to the *manifest* weight of evidence. Otherwise, important litigated issues of fact are in effect conclusively determined in administrative decisions based upon palpable error." But in their suggestions for the present moment there is little difference between the majority and the minority. The majority admit that in particular cases the courts may fail sufficiently to control administration, and where such cases develop they should be handled by providing greater review. The minority believe that if *manifestly* incorrect decisions must be affirmed under the "substantial evidence" rule, Congress should find some other formula. They believe that Congress furthermore should classify various types of decisions according to their technicality and effect on private rights and provide for each "special degrees of review." They regard the present standards of judicial review as unsatisfactory because they have grown up in a haphazard way without the aid of legislative distinctions of the type suggested. Congress should act so as to reduce "uncertainty and variability." I find these suggestions quixotic and contradictory. It seems to me that no human mind is capable of stating the distinctions which are called for, and that any statements which might be expected to do so would increase the uncertainty and certainly the variability. The distinctions which the minority call for are just that sort which can best be worked out by the intuitive process of judicial legislation. Far from being uncertain and variable, judicial review today, in its conceptual apparatus at least, seems to me to be quite simple and moderately uniform. In view of this prevailing uniformity I do think that where it is felt that the courts in particular cases are not providing adequate review, it would be possible to find a form of words which, because of contrast with the usual formula, would require a conscientious court to widen the scope.

THE above was written before war had descended completely upon us. There will be, I believe, very little opportunity either to reflect or act upon proposals for the reform of administrative adjudication. It should be pointed out that already as a result of continuous attack upon the administrative process and of the work, reflections, and criticisms of students, of judges, and of administrators themselves, and finally as a result of the official investigation of the Attorney General's Committee, very substantial reforms have taken place. In a minor degree, at least, the coming period will give us a chance to observe whether it may not be true that the existing arrangements adequately meet all legitimate demands. It may well be that the objectives of the laws administered in the recent past have generated so much antagonism that the justice of the procedure which put them into effect could never be gauged with sufficient objectivity. Now the objectives of these laws will be of secondary interest and concern. Heat and violence will be directed elsewhere. And it may be that the procedure under which the normal peacetime activities are now conducted will under such circumstances seem more satisfactory. In any case, the whole subject will no doubt be much affected by what transpires in the war period ahead, and at its conclusion it will be necessary to

take a fresh view of the terrain. It is likely that we will be accustomed to far wider governmental activity than is the case today. In the meantime, the emphasis will have been upon comparatively summary and warlike procedures. It may become a crucial issue whether such procedures will gain in peacetimes the ascendancy over others which emphasize in large measure and at considerable cost the protection of the individual. Perhaps those persons who fear such ascendancy may take some hope from the idea that the protection of the individual is, for us, closely associated with the conception of democracy, in the name of which we are fighting this war. As a straw in the wind, attention might be called to the boards which have been set up, composed everywhere of persons of the highest repute, to determine upon hearing whether enemy aliens arrested by the federal government shall be released or detained. The noteworthy point about these boards is that in the last war detention was accomplished without any process whatsoever and in a time when the menace of the fifth column was hardly understood. The new alien boards speak strongly for our belief in fair procedures and for our will to maintain the tradition.

Reviews of Books and Documents

War Industry and Community Problems

By Robert K. Lamb, Staff Director, Select Committee Investigating National Defense Migration

NATIONAL DEFENSE MIGRATION. Third Interim Report of the Select Committee Investigating National Defense Migration. House Report No. 1879, 77th Congress, 2d Session (1942). Pp. iii, 109.

THE war is raising administrative problems in this country which seem to have no parallel even in our experiences during the First World War. These new problems stem directly from the character of modern war. We have arrived in the opening months of our participation in this war at about the same point we had reached in the closing months of the last war. The last war was fought with a minimum of interference with "business as usual." The plans for fighting this war were modeled on the experiences of the last war and embodied in the "M-day" or Industrial Mobilization Plans of the Army Industrial College.

Between the end of the First World War and our entrance into the Second World War the nature of modern warfare has been transformed. In the third interim report of the Select Committee Investigating National Defense Migration for the House of Representatives (the "Tolan Committee") there appears a statement on the nature of this war as that Committee understands it:

> Modern war is a war of metals and motors and fuels as well as men. Manpower in the fighting forces is not enough. Courage is not enough. The potentialities inherent in peacetime industries are not enough. Only by a far-reaching realinement of the factories and their equipment, of the workers and their skills, of the managerial forces and their "know how," of the Government and its executive powers—only through such a realinement can we hope to get the job done—and done in time.

In the same report the Committee explained how it came to concern itself with the problems of the nation's war procurement problem. In the introduction to this report the Committee said:

> In discharging the obligation of the committee under its resolution to study national defense migration, it has proven necessary that we study the causes of this migration. It is required of the committee that we present to Congress the reason why this migration has been unplanned and unnecessary in many of its phases, creating community distress and hardships for these migrants. Poorly planned production in the war effort has been the primary cause of the unplanned and unnecessary migration up to the present time. This has led to an unparalleled waste of manpower and of plant resources. Therefore, this committee in its second interim report and, once again, in its third interim report, has been forced to deal with the necessary steps for the full utilization of our productive capacity and manpower. The second interim report dealt primarily with the conversion of durable consumer goods industries. This report deals with procurement insofar as this subject relates to the war production and the subsequent planning of the use of our manpower. This third interim report should be read in conjunction with our second interim report, to which it constitutes an up-to-the-minute supplement.
>
> It must be understood that wasteful migration is an integral part of the general waste of our manpower accompanying the failure to plan for the full use of our facilities. This is directly reflected in the haphazard, piecemeal procurement procedures employed to this date.

In brief, the transformation of a "highly competitive community" into "a vast unitary mechanism" requires a reconsideration of our present situation. The superimposition of priority orders will, unaided, only create priority unemployment of thousands of plants and their working force. The crystallization of price schedules will not halt the disruption in our productive economy implied in shutting down thousands of plants while piling new contracts upon hundreds of other larger corporations.

Mr. Bernard Baruch phrased it well when he said: "In modern war, administrative control *must* replace the law of supply and demand." He has not, however, elaborated on this point. The nearest he came to doing so was when he said: "Under war conditions . . . there is more business than all the facilities of

the country can handle. Competitors must become co-operators in order to meet the very minimum demand for shortage items. Control of this co-operation rests in government. . . ."

The problem implied in the waging of modern war can be simply stated; the solution is by no means so simply achieved. In this war we expect to see our entire economy transformed into a war machine. Already shortages of raw materials have resulted in curtailment orders for our largest civilian durable goods industries, such as automobiles, refrigerators, stoves, and washing machines. Construction of dwellings for housing civilians not engaged in production of war goods has ceased. Shortages of rubber, and in some regions of gasoline, are curtailing the operations of private automobiles.

The character of modern war was anticipated by Bernard Baruch in 1931 in a memorandum (*Taking the Profit Out of War*) submitted to a congressional commission, when he wrote:

> Prior to 1870, nations hazarded their existence in reliance on small fractions of their strength. In the Franco-Prussian War, Germany showed some dim conception of what she called the "Nation in Arms," by which was meant that, in war, her entire resources of men, money, and things should suddenly become a compact instrument of destruction. The true intendment of this conception was fully grasped by none of the belligerents in 1914 and became clearly apparent only in the last months of the World War.
>
> What it really means is that in the next major conflict the entire population must suddenly cease to be a congeries of individuals, each following a self-appointed course, and become a vast unitary mechanism composed, in our case, of some hundred and twenty-five million co-related moving parts all working to the end of directing practically all our material resources to the single purpose of victory.

These lessons, derived by Mr. Baruch from his firsthand observations of industrial mobilization during the First World War, are still not fully embodied in the current operations of the War Production Board. In this memorandum Mr. Baruch set forth the steps which he thought should be followed to attain victory:

> No such results as these are at all possible without a sanction, control, and leadership in industry sufficient to organize and deal with it as practically a single unitary system instead of a highly competitive community. . . . These principles, while generally conceded in a vague uncomprehending way, are hardly understood at all. Yet they are of such sinister and overwhelming importance that the neglect of them is, in my opinion at least, one of the most threatening aspects of our governmental policy. From my experience I am convinced that it is quite possible to prepare, in peace, plans that will make the transition from Peace Industry to War Industry without serious disruption, to carry on the feverish industrial activity of war with the least possible harm to civilian morale, to accomplish all in the economic struggle that we shall ever need to accomplish and, even with all this, to lessen the destructive after-effects of major conflict.

It is not intended that the details given by Mr. Baruch shall be elaborated here. It is not even intended that all of the broad general principles laid down in his memorandum shall be reiterated here. The object of this review is, rather, to indicate the changes in administrative procedures in both government and business called for by total war. Viewed from the standpoint assumed by the Tolan Committee, and earlier by Mr. Baruch, all economic, social, and political organization becomes focused during wartime upon the task of maximizing output of the engines and instruments of military destruction.

This objective is not of our own choosing. Our enemies have anticipated the start of the war by many years to launch their programs for the transformation of their national economies to such military objectives. We find ourselves confronted by an alliance of three such militarized economies. The problem is to meet their challenge in time.

We find ourselves hampered by our traditions. It is our illusion, for example, that we won the last war with our giant industrial capacity and our military manpower. Actually our entry into the First World War seriously disrupted our munitions program, which required almost a year to recover its even flow, as Hugh S. Johnson told in his *The Blue Eagle from Egg to Earth* (p. 85):

> In spite of the fact that this country for two years had been supplying in overwhelming quantities nearly every kind of implement and munition of war to the Allies, when we ourselves entered the lists our munitions program faltered and at last almost completely failed. . . . The supply situation was as nearly a perfect mess as can be imagined. There were at first five, and later nine, separate purchasing agencies embarked on what was planned to be a thirty-billion dollar program. Nobody knew what sized army they were buying for. Each bureau had its own buying program, no two were the same, and no one was the right one. . . . In the markets, these bureaus were competing with each other ruthlessly for price, facilities, transportation, and delivery. They so clogged up the efficient factories and the whole industrial region north of the Potomac and

east of the Alleghenies that they practically paralyzed them by shortages of labor, fuel, raw material, power, and transportation. It seemed a hopeless tangle.

In order to place and provide for the long-range program of raw materials and facilities, the War Industries Board simply had to have a statement of gross requirements, and these departments could not furnish it. It was absolutely necessary for the Board to forecast some kind of a supply program to parallel the manpower program, but there was no supply program to give them.

The tradition, as embodied in our industrial mobilization plans, is that procurement should rest with the military arms, that only the largest corporations are fitted to be prime contractors, and that there is no reason why war should cause more than a minimum of disruption of the production of consumers' goods by medium and small-sized firms, but (to perpetrate an Irish bull) if it does cause disruption, any attempt to enlist such industries in war work is sheer social welfare.

In his memorandum Mr. Baruch pointed out,

It is absolutely impracticable for the War Department to control industrial mobilization because:

(a) It is an economic problem requiring the ablest leadership in industry and utterly unsuited to military administration.

(b) The central control agency must act as arbiter of conflicting demands—the greatest of which is that of the civilian population. No single competitor such as the War Department should be entrusted with such arbitration.

(c) The job of the War Department is our armed forces. That is a big job. To pile on top of it the task of economic mobilization would insure the failure of both.

There is an inevitable tendency in the War Department to forget these principles even in planning. Their function is to say what they want and when and where they want it. The job of industrial control is to see that they get it strictly on their specification. We must neither militarize industry nor industrialize the army.

Similar statements as to the impracticability of leaving control of industrial mobilization in the hands of the military services were made by witnesses in the Tolan Committee hearings. A particularly vigorous stand was taken by Mr. Morris L. Cooke, chairman of the Shipbuilding Stabilization Committee and technical consultant of the Labor Division of the Office of Production Management at the time of his testimony. Mr. Cooke had extensive experience during the World War in expediting production.

In any analysis of why we do not produce munitions more rapidly and with fuller use of all our capacity, first consideration should be given to the state of mind and habits of work of many of those in direct charge of procurement—officials, that is, of the War Department, Navy, and Maritime Commission.

Certainly an important part of our difficulty in speedily building up our defense production is psychological and may be most clearly grasped if we consider the difference between what lies behind the term "procurement," as used by those purchasing goods for the Government, and the term "production" as used in industry. The term "procurement," as its meaning has been developed over many years of peacetime purchasing, describes a certain type of assignment given to military men to acquaint them with the various types of things which are needed by the services and, in a general way, with the means used for obtaining them. The term "production" as used by American manufacturers, by way of contrast, implies volume and tempo.

In fact, for much of it—such as for complicated pieces like tanks, antiaircraft guns and airplanes—a protracted period of purchase is desirable. In peacetime such items are normally ordered a few at a time. Prior to 18 months ago three airplanes was probably the maximum number of fighting types ordered at one time. These small orders and this drawn-out purchasing procedure enabled those in charge to play advantageously with the design, even after the item had reached the manufacturing stage. It enabled our military men to take advantage of advances in the state of the art and to incorporate in our designs improvements which might be reported in the practice of foreign countries. These techniques tend to keep peacetime obsolescence at a minimum. But being under the necessity of keeping so many highly educated men occupied it was useless to estimate the over-all expense and a premium was all but put on drift in the acquisition of supplies.

The need for central planning and control over procurement is well described in Mr. Baruch's memorandum. There is, however, only the slightest discussion of the problems implied in the enlistment of *all* America's men, machines, and materials in the war effort. It is apparently assumed that if a few limited objectives are achieved the rest will follow. There is much to be said in favor of Mr. Baruch's proposition, especially in view of the fact that to date we have not achieved these limited objectives. The second and third interim reports of the Tolan Committee would seem to suggest, however, that a failure to attain these limited objectives may be closely related to the failure to include the operation of *all* American industry in the plan.

In its third interim report, the Tolan Committee has given its answer to this question. Several quotations consolidated from this report will serve to indicate the general position of the Committee.

> The heart of our problem is procurement. Those who determine procurement procedures determine the course of the war effort. To date authority over procurement operations has been divided, and output has suffered. The latest Executive order has not changed this situation fundamentally. It has merely juggled the weight of authority. . . . In order to bring into war use every producing facility at our command, we must first centralize the work of procurement in a single agency. . . . Of course every detail of production cannot be handled by a single War Production Board operating in Washington. The committee has heard the operation of the national war plant likened to that of a multiplant corporation. There is planning and control in a single central office, and general directives are given to the individual plants. These in turn make their own detailed plans by departments.

To carry out this program the Committee proposed that the operations of war production be decentralized by regions and by industries. It was reported in March that the War Production Board was contemplating a plan which would appear to the uninitiated to be a close approximation of this Committee proposal. The contemplated plan, as reported, consisted merely of a geographic dispersion of the industry branches, placing their headquarters near the geographic centers of the particular industries with which they must operate. In effect it would be an extension of the practice followed in the case of the automobile industry when the automotive branch under Mr. Ernst Kanzler was transferred from Washington to Detroit as one of Mr. Nelson's first actions as chairman of the War Production Board. That this type of change is in no way designed to secure effective decentralization of procurement with respect to small plants or to meet the fundamental problem of their use for war purposes is pointed out by another quotation from the third interim report:

> The inadequacies of our procurement procedure and personnel are probably shown most clearly in our inability to make use of the facilities of small and medium-sized plants. One production expert testified that this group of plants has a potential contribution to war production of 150 million man-hours per week. This means that full utilization of the smaller plant facilities would about double the present human and mechanical effort devoted to the production of war goods. However a representative of O.P.M., appearing before this committee at the end of November 1941, testified that a relatively insignificant proportion of small plants were as yet producing armaments.

During the past eighteen months, purchase of armaments has been carried out by the separate supply branches of the military services and by other independent procurement agencies on a company-by-company and item-by-item basis. This procedure places the emphasis upon speedy signing of contracts whereby responsibility for planning the maximization of output, the early delivery of goods, or even the full utilization of existing capacity rests with the individual prime contractor. Any subcontracting of these orders depends at present upon the decision of the individual prime contractor.

Hand in hand with this procedure has gone the granting of large sums of government money for construction of new plant facilities for these large corporations and further sums for installation of new machinery which must be made by the overworked machine tool industry. Meanwhile plants with a potential contribution of one hundred fifty million man-hours per week stand idle, and a sizable number of these firms are now being forced into bankruptcy.

The effect upon state and local government of such development needs no underlining. Workers who find themselves without any prospect of employment in communities stranded by the loss of small industry are being attracted, often without success, to prospective employment where large contracts have been let. All the indexes of community activity and prosperity are declining in the towns from which workers are migrating.

Effective regionalization of war production requires adding the use of now idle facilities to the output of already participating contractors. This program will not be a simple undertaking, of course. It is not, however, to be dismissed with the contention that we do not have time to be bothered with it because we must hurry on with the war. Thousands of skilled management men, engineers, and supervisory personnel are available in these firms now standing idle for lack of war orders. Adding their efforts to war production will have an enormous effect in a relatively short period of time, provided the raw materials are available and those in central control positions will direct the flow of such materials to these new participants in the war program. Regionalization plans embodying such provisions for bringing about this expansion of output have as yet not been reported to be even under study.

The problem involved in enlisting these new participants in war production is first and foremost an administrative problem. A whole series of devices for organizing individual smaller firms into larger operating units must be worked out. Fortunately these devices do not need to be invented but only to be adapted. One of these is the "pool."

Pooling of companies predates the Civil War in this country; in fact the antitrust laws have for long turned a jaundiced eye upon certain types of pools. The use of pools in the present war has required a dispensation from the Department of Justice to enable their formation for war production purposes. This approval has been justified on the ground that these pools are designed to increase rather than to diminish output. These firms are not pooling their facilities as competitors but as cooperators whose facilities are needed to supplement each other in order to provide a well-rounded productive capacity with which to turn out the needed parts of a complete weapon. The War Production Board has an administrative unit which examines the organizational structure of every pending pool to determine whether it conforms to certain generally defined requirements. Such approval is mandatory before the combined companies can obtain a contract as a pool. This procedure can be and has been bypassed through issuing a contract to one of the larger firms in the pool who nominally acts as a prime contractor while the other firms in the pool are considered as subcontractors. This latter type of pool shades into the "mother hen" type of organization represented by the "York plan" where the facilities of numerous small firms in a community supplement those of one or two large firms which subcontract work to them.

England and Australia have had considerable experience with the use of pools and have exploded the myth that "these little fellows can't work to close tolerances," i.e., are incapable of fine machine work. Several successful pools have been formed in this country, but even those which have secured at least one contract have not been kept working at full time. To date there has been no disposition in Washington to encourage their operation. Procurement authorities have preferred to turn to single large corporations which they consider "more reliable" because all responsibility of the procurement officials is thought to cease with the letting of the contract.

Another device is the "capacity center" where a central switchboard covering an entire area is employed for checking on momentarily idle pieces of machinery which may be used for one essential job or another. Free time of workers skilled in running such machines is also recorded. No census of machines can compare with this device for insuring full use of available machinery. Capacity centers are in successful use in many parts of England; one is working well in Providence, Rhode Island.

For effective use of these devices, the Tolan Committee has advocated a centralization of the procurement procedures and a decentralization of the detailed operations within the War Production Board. Regional boards under the War Production Board are essential. These must have authority to negotiate contracts, to combine firms into pools, and to supervise the allocation of needed materials and new machines. Staffs for these regional offices must include qualified industrial engineers under instructions to combine all available facilities in the area.

Especially as regards metal-working capacity, the artificial distinctions between industries should be disregarded by these regional offices. These are among the shortcomings of present procedures. The large corporations which at present hold the bulk of war contracts wish to keep existing lines of dependency. Direct letting of contracts to pools which may include firms from a number of different industries has not been pushed, nor is it likely to be, by representatives of these leading firms.

Clearly the administrative problems implied in such a "realinement of the factories and their equipment, of the workers and their skills, of the managerial forces and their 'know how,' of the Government and its executive powers" are challenging. That they are not insurmountable may be shown by reference to the very giant corporations which are most likely to look askance at such proposals. These companies were themselves compounded from just such smaller units. Moreover the leading management men of the giant corporations rose from just such smaller firms in the great majority of instances. Surely American ingenuity and flexibility are not dead, and what the corporate leaders of today achieved in the days of the First

World War the current crop of smaller manufacturers can accomplish now.

Mayors and public administrators in many communities have already thrown their weight behind the efforts of manufacturers, workers, and other interested groups in their home towns to get war contracts. Some of these officials, like Mayor Gage of Kansas City in his fight on behalf of the Mid-Central Associated Defense Industries, or Mayor Kelly of Chicago and the pool of three thousand metal working firms in that city, have seen their efforts rewarded with contracts, but only after a most strenuous expenditure of time and energy. It seems probable that they could have more and quicker effect if they were to form a political as well as an industrial pool.

Parallel with the industrial administrative problems which exist for the engineers, managers, and federal officials charged with utilizing these firms are the political and administrative problems which will appear during and especially after the war for those communities which do not succeed in holding war business and keeping their plants rolling and their labor working. Many companies that can neither be converted to war production nor secure the materials to continue producing consumer goods are bound to disappear or at best to close for the duration of the war, thus scattering their employees. The full effect of this development upon American community life will be determined by the extent to which we can enlist convertible industry in the war effort. And the extent of such conversion of industry depends upon the "recruiting officers" who control procurement.

A paradox may seem to be inherent in the thesis presented by the Tolan Committee. Full use of our smaller industrial firms will greatly increase the output of war goods. Such full use appears to be unattainable without a fundamental change in our procurement procedures. One of the chief barriers to such a change is the solid front presented by the large corporations which today have 75 per cent of our war contracts. Yet even the early accomplishment of the task which the large corporations have undertaken depends upon that same change in our procurement procedures. Without it the war production administration will not advance their delivery dates, will not review their production schedules to see whether they might not increase their output with existing facilities, and will not examine their present assurances that raw materials supplies are ample. Moreover in many instances the path to maximum output lies through a readjustment of the tasks assigned to the small and large firms so that each is using its capacity to the greatest national advantage.

This seeming paradox arises from our confusion as to the nature of modern war. As Mr. Baruch stated, "These principles, while generally conceded in a vague, uncomprehending way, are hardly understood at all." This situation should not surprise us. What is involved should be clear to the student of administrative procedures: we are asking a group of administrators who are trained to operate according to one set of rules to try to function overnight according to another. The problem set by modern war is how to maximize output of goods to be blown up and thrown away. Ordinary corporate accounting is defied by the demands of war bookkeeping. The objective is only to a minor degree that of maximizing output while minimizing input. The order of the day, whether we as economizers like it or not, is "damn the expense, full speed ahead."

The watertight compartments of individual firms or even of individual industries cannot contain the onrush of demand for output. In Australia, for example, there is a pool of fifty garages turning out machine guns. Their output adds just so much to the national total. Naturally such examples can be reduced to the point of absurdity, but it is equally clear that to date we have not begun to approach the saturation point.

For a depression decade we have had to hold production down to the level of demand. Now suddenly we find ourselves with an almost unlimited horizon of demand. To overtake and pass the previous output of our enemies we need to top their current rate of output by several times. This will take some doing. Its accomplishment calls for a reeducation of our administrators, governmental and industrial, as to the task at hand.

The Authority of Organized Knowledge

By John M. Gaus, University of Wisconsin

DYNAMIC ADMINISTRATION: THE COLLECTED PAPERS OF MARY PARKER FOLLETT, edited by HENRY C. METCALF and L. URWICK. Harper and Brothers, 1942. Pp. 320. $3.50.

THESE papers, introduced in this collection with a brief foreword of appreciation by the English industrialist, B. S. Rowntree, and a brief biographical note with appraisal and evaluation by the editors, should be added to the libraries of students of administration. The editors have wisely published them in the sequence of their appearance and as wisely have not deleted their superficial repetition. As they are, therefore, they are the more useful; for they will introduce strangers to one who was generous and eager to welcome human experience and enthusiastic to glean from even the humble and casual incident illustration and meaning useful to her search. "Her aim was quite simple: she wanted a better ordered society in which the individual could live a fuller and more satisfactory life, and she endeavoured by her own pioneering to contribute to all the social experiments which were being made in an attempt to find the real avenue to this fuller life."

This judgment by the editors is well sustained by the spirit of ardent exploration and expounding which characterizes the papers presented here. It was a spirit akin to that of Graham Wallas; and if it lacks his range in history, it was so generous that the differences of national cultures set no barrier to the eagerness to understand and to find what is good and usable. A period of formal education shared in two countries doubtless helped; Radcliffe and Newnham both honor her among their daughters. But such a product does not come alone from experience in the colleges of two countries—which may, indeed, as well provoke some other results. She was perhaps, as Eduard C. Lindeman rightly remarked in the *Survey Graphic*[1] shortly after her death in 1933, one who "belongs to the high tradition of New England philosophic thought. She might have stepped easily into the Concord circle. . . . But she was at home also in the intellectual circles of contemporary Cambridge."

I believe that it was her acquaintance with another type of New England that prevented her from a mere impassive and uncreative role. The Boston of 1890 to the World War had, more than other cities, an extraordinarily able group of pioneers in various fields of social work, administration, and allied activities who were not only outstanding in the development of a field but able to see their field in a humane setting. That was true, for example, of Robert A. Woods, of Richard Cabot, of Filene, of Dennison, of Kendall, of Robert Valentine and his partners Tead and Gregg, of Brandeis, of Joseph Eastman. In medicine, a group of the leading physicians held views—and practiced them—that have still to be learned in most other regions of the country. In the latter years of his life Frederick Taylor had a group of friends in Boston that included H. P. Kendall, Stanley King, Felix Frankfurter, and Valentine. The relation of scientific management to industrial relations problems was among the subjects of discussions which Taylor's biographer, F. B. Copley, records.[2]

Thus there was an atmosphere of discussion and experiment in the community in which Miss Follett was at work which contributed to the development of her thinking. Her own activities in the school-center movement and vocational guidance are noted by the editors, who also call attention to her service on the Massachusetts minimum wage boards. The mention of these factors of setting and experience is pertinent to an appreciation of the way in which she observes and records for later apposite use effective illustration of her ideas. Her papers are the more valuable for these often homely incidents that light up and humanize an abstraction. The younger student of administration may well adopt the practice as useful to his own growth from his daily experience and encourage in himself a like sensitiveness to significant new books that, regardless of subject-matter field, may seem to throw light

[1] "Mary Parker Follett," 23 *Survey Graphic* 86 (1934).

[2] *Frederick W. Taylor* (Harper and Brothers, 1923), pp. 417 ff.

on the more central problems of this profession.

The editors remark that "In a gradual transition, involving no abrupt changes of viewpoint nor severing of old connections, Mary Follett had passed naturally and logically from political science and the problems of government to social administration and the solution of social problems, and thence smoothly into the realm of industrial organization and administration." But may we not say that it is precisely because she did not "pass" from one compartmented "subject" into another, because she worked cumulatively in different aspects of the same basic problems of administration, that her work is most useful to us? And because in her studies she was always eager, as her editors point out and her writings inwardly illustrate, to be acquainted with writings and people who were facing the problems of the new world and thinking freshly and honestly about them, did she not indicate to us all that we can thus avoid lapsing into a sterile and distorting overspecialization and rigidity of outlook? Thus in *The New State* (published in 1918 and not, as stated on p. 13 by her editors, in 1920) she balances, as contemporaries overstressing the guild movement of the time failed to do, the occupational group factor with that of the neighborhood, and the theories of the pluralists with a search for the factors that invite cooperation as well as conflict.

These inquiries led her to devote her *Creative Experience*, published six years later in 1924, to the examination of what psychology could offer to an understanding of this central problem of a stable and orderly institutional system in which working arrangements might facilitate creation and consent out of conflicts. How important is the quest on which she embarked is clear to us when we note the present controversy over the use of joint committees of "management" and "labor" in the war industries or the difficulties of "coordination of war effort." Miss Follett had noted these problems in her *The New State* in 1918 and refers specifically to the possibilities in the Joint Industrial Councils then being recommended by the famous Whitley Committee. How much better off we should be today if more had emulated her devoted efforts in that exploration, which is recorded in these papers—mostly the fruit of her participation in the work of the Bureau of Personnel Administration in this country and in similar conferences in England, such as the Rowntree Lecture Conferences and those at the Department of Business Administration of the London School of Economics. There is useful advice to university scholars in her tribute (pp. 17-18) to the businessmen among whom "I find the greatest vitality of thinking to-day [1926] . . . because industry is the most important field of human activity, and management is the fundamental element in industry."

By a natural development of her inquiries, Miss Follett's papers during the last decade of her life center on some of the more concrete and central problems of administration. The principles of organization, she states (p. 267), are "evoking, interacting, integrating, and emerging"; and she restates them in the final lecture (p. 297) as

1. Co-ordination by direct contact of the responsible people concerned.
2. Co-ordination in the early stages.
3. Co-ordination as the reciprocal relating of all the factors in a situation.
4. Co-ordination as a continuing process.

And (p. 305) "the underpinning of these is information based on research."

It is a far cry from such ideas of the role of administration and of the "leader" to current newspaper views that a "strong man" can coordinate the vast and sprawling war organization. Beneath, behind, and interfused throughout these terms which Miss Follett employs is a view of how human beings can be brought to work together through consent. Her theory of organization rests upon a view of human motives—a psychology—and upon a faith that an agreed result can be achieved out of a multiple of individuals and clashes and conflicts. We may have another belief—that conflict is more fundamental than consent. We may think her naive in her assumption, as Emerson and many of the New England humanists may be said to be naive in their attitude toward evil and suffering. In our present world, torn by war abroad and the clash of "pressure groups" and individual ambitions at home, her criticism of the struggles for "rights," for "collective bargaining" in terms of warlike strategy, for every sort of absolute and intransigent claim which prevents the breaking down of the abstraction into concrete and negotiable units, may seem "well-meaning but un-meaning," fuzzy, and remote

from our tasks. But turn to her paper on "Constructive Conflict" with its substitution of integration for domination or compromise, reminiscent of Max C. Otto's "right by agreement" as set forth in his *Things and Ideals* and *The Human Enterprise*. Follow it by her papers on "The Psychology of Consent and Participation," "The Psychology of Conciliation and Arbitration," and the two papers on leadership. A new idea, a new approach, may have been insinuated into the concept of organization, procedure, and institutional life generally.

Authority thus appears as something inherent in a position, with duties and responsibilities properly analyzed and set forth in its classification. Current operations then become the use of each position in its proper function, and the idea of a leader as a dominating and directing person gives way to something subtler based on the task of facilitating the positive functioning of each position. "This phrase, 'delegating authority,' assumes that the owner or chief executive has the 'right' to all the authority, but that it is useful to delegate some of it. I do not think that the president or general manager should have any more authority than goes with *his* function. Therefore I do not see how you can delegate authority except when you are ill or take a vacation" (p. 149).

This view of authority is naturally accompanied by the complementary idea of responsibility as being cumulative, widely shared, and rarely concentrated and ultimate. This view is challenging to widely held notions—yet the evidence for it is substantial, and the trend toward equipping our governments, for example, with auxiliary and general staff services supports the idea. In the paper entitled "The Meaning of Responsibility in Business Management" Miss Follett clarifies these terms; her application of the idea of responsibility to government as well as business, and her citation of Franklin Lane's suggestions concerning the cabinet are pertinent to the tasks that even now are confronting the Executive Office of the President.

In her discussion of "Leader and Expert" Miss Follett points out that there is developing a relationship for "which we have not yet found a place in our vocabulary or in our philosophy of management"—a relationship that is neither a "coercion of advice" nor the ordinary type of directive authority. It is this fluidity and growth in administration that is at once an exasperation when we try to explain and describe and a challenge and enticement to the student who feels that he is working in an area in which he may find an opportunity for achievement in defining and perhaps inventing. Are there emerging, in the "planning" activity developed in the factory or the unit of government, controls of operation based not on the ordinary type of coercive direction but upon the use of organized knowledge—budget estimates and analyses, personnel classifications, land-use maps—that enable us to achieve agreed solutions without the frustrations that come from "domination" or "compromise"? Is this not the central problem of government in the widest sense? Is not the alternative an endless and meaningless clash of pressure groups and personalities? Can we operate our vast institutional systems, interdependent as they are, if more impersonal and objective methods of facilitating agreed policies that will have broadly based support are not invented? It is because these papers plow up our thinking on such important questions, and because their author offers us the example of a person who ever kept her mind open to relevant evidence and sought to digest and apply it, that they are to be commended to students of administration —which should mean administrators generally.

A Balanced Approach to Unionization

By Arthur W. Macmahon, Columbia University

EMPLOYEE RELATIONS IN THE PUBLIC SERVICE. Report of the Committee on Employee Relations in the Public Service of the Civil Service Assembly of the United States and Canada. Civil Service Assembly, 1942. Pp. xv, 246. $3.00.

"THE most pressing question in the minds of public administrators and personnel officers is the degree of authority which employee groups may command in negotiation without jeopardizing the responsibility of the public agency." Happily the committee led by Gordon R. Clapp which thus poses one of the most perplexing of issues offers more than a valuable canvass of alternatives and arguments; their report embodies the modestly confident choices that are the basing points of a positive program.

The present volume is one of a series of studies and publications authorized in 1937 by the Civil Service Assembly under the general title, "Policies and Practices in Public Personnel Administration." For each of these studies a chairman and an advisory committee have been chosen by the president of the Assembly. The group on employee relations was constituted in 1939. In experience, its members were diverse.[1] Six of the fifteen were officers of unions; three were members of civil service commissions; the others were variously versed in the practice or the philosophy of personnel management. "Such a group," it is said (p. xiii), "seemed ideally suited to defining the important issues in employee relations and assuring that all significant arguments were brought to bear on these issues."

The report itself was primarily the work of the chairman. It is presented "as a document that has the general blessing of a substantial majority of the Committee's large membership" (p. xiii). But the committee itself could hardly be assembled; its task was largely that of individual criticism. The final choice of issues and the shaping of conclusions, as well as the actual drafting, lay with Gordon R. Clapp.

Naturally the viewpoints often reflect the experience of the Tennessee Valley Authority. In the collation of materials and in the preliminary draftsmanship, Mr. Clapp was assisted especially by Henry C. Hart of the TVA's personnel research staff. The institutional background of the constructive analysis is further reflected in the extent to which the suggestions are given point by quotations from the study prepared in 1936 for the President's Committee on Administrative Management by Floyd W. Reeves and Paul T. David, both previously associated with the TVA in the formative period of its employee relationships.

The volume is not a canvass of firsthand data, although its summary value is considerable. Essentially the report proceeds by the orderly statement of issues, by the assemblage from the existing literature of comments pro and con, by the due admission of uncertainties and qualifications, and by the quiet assumption of basic positions. In all of this the chairman has no doubt been influenced by his own managerial experience. Indirectly, therefore, the report is partly a laboratory record, although express allusions to the TVA are held rigorously in scale. The only special factual inquiry underlying the report was the study of twenty-two civil service jurisdictions undertaken by the Civil Service Assembly as a prelude to the series of committee studies to which the present volume belongs. But on employee relations the fragmentary information thus afforded was of slight value. This circumstance emphasizes the method by which the report seeks to clarify controversies through surveys of the existing literature. The result sometimes

[1] The committee consisted of Gordon R. Clapp, formerly director of personnel and now general manager of the Tennessee Valley Authority, chairman; of Jacob Baker (United Federal Workers of America), James B. Burns (American Federation of Government Employees), Abram Flaxer (State, County, and Municipal Workers of America), Arnold Zander (American Federation of State, County, and Municipal Employees), Luther C. Steward (National Federation of Federal Employees), and David Kaplan (International Association of Machinists); of C. L. Campbell (New York State Department of Civil Service) and Harry K. Wolff (San Francisco City and County Civil Service Commission); of Otto Beyer (National Mediation Board), John J. Corson (Social Security Board), Roy F. Hendrickson (Surplus Marketing Administration, formerly departmental personnel officer), Paul T. David (then with the American Youth Commission), and Ordway Tead.

partakes of an anthology of opinion, thoughtfully arranged and quickened by decision.

The background of most of the contemporary problems is organization. "Any review of major issues of employee relations in the public service seems destined, . . ." it is said (p. 2), "to concentrate upon organized relationships between employees and their employer." With this goes the fact that "there is everywhere evidence of a growing emphasis on dealing directly with administrative superiors" (p. 38). Existing organizations are in part general unions of government employees; in part, unions confined to specific public services or phases thereof, like fire fighting or postal operations; and in part, unions (in the past, mostly of the craft sort) which cut across public and private employments. Numerically, the extent of unionization in public personnel is clouded by lack of information, on the one side, about membership in craft or laborers' unions and, on the other, about independent local unions of public employees. In 1939 the total membership was at least slightly above 600,000, amounting to about 15 per cent of all public employees, to be compared with a rate of 23 per cent in private industry. But in the federal service, where there are eighteen unions of national scope representing government workers primarily, the percentage of union membership exceeds that of private enterprise.

Ground is cleared by examining certain "unique assumptions" drawn from the theory of governmental sovereignty and the principle of democracy, which are often superimposed upon ordinary views of the employment relationship in modern society. On the familiar concept of governmental impartiality, the report argues that the problem of impartiality (which would be presented more realistically in the staff of a labor relations board than in a police force) is "peculiar to a very small segment of the public service." As for the supposedly unusual advantages of public employment, if all the complex factors could be weighed, it is not certain "that the public employee has, on the whole, better conditions of work than his counterpart in private establishments" (p. 61). In the federal service, at least, evidence is lacking that the state accepts the role of model employer. The absence of the profit motive may be offset by the fact that the public employer is subject to the pressure to justify tax expenditures. Nor are governmental activities generally to be viewed as uniquely vital. On the other hand, declares the report, "political democracy provides an atmosphere unfavorable to autocratic administration" (p. 214).

But, beyond this conclusion, "political theory can furnish no answer to the basic inquiry: 'How shall the public administrator regard the self-organization of his staff to seek a voice in the control of their working conditions?'" The policies of a desirable relationship may best be sought in the light of the requirements of effective management. "Neither political theory nor law," it is said (p. 76), "defines the course which public employers must follow in order to tap the potential energy of constructive relations with employees. At most, they set wide boundaries."

Four and possibly five broad alternatives are conceivable. Dealings may be with individual employees alone, accompanied by opposition to union organization. Employees may be organized under official patronage. Relations may be maintained with both individual employees and with union representatives. Dealings may be conducted where feasible with organizations independent of management, possibly leading to recognition of an agent chosen by a majority of the employees as a representative of the whole group. A fifth type of relationship would be the closed shop.

In the face of many variations, simple statements are misleading. But experience suggests several conclusions. Purely individual relations are apt to be self-defeating; they encourage resort to political leverage. On the border line between the third and fourth possibility, as outlined above, it was significant that, while the initial formulation of the TVA basic employee relationship policy in 1935 involved individual as well as group relationships, "as organization became stronger and more adequately representative of employees, joint activities of management and employees drew entirely upon the organized groups for employee spokesmen" (p. 85). In this respect TVA patterns are still unusual. The future of the majority principle is admittedly uncertain. Even with its acceptance, "difficulties remain concerning the mechanics of the selection and the designation of the unit within which the employee's choice will be made" (p. 94). There

will be need for machinery to handle the increasingly frequent organizational disputes likely to rise in the public service.

Slightly less than half of the public employees who are members of government service unions are affiliated thereby with the AFL or the CIO. With the possible exception of police forces, the report concludes that "it does not seem the wise course to deny public employees the right of affiliation, either by statute or refusal to negotiate with affiliated groups" (p. 106). Indeed, a warning is sounded: "management runs a serious risk of losing employee confidence and destroying employee responsibility if it makes a decision as to which type of organization is best for employees" (p. 106). Outside representatives may be especially helpful in behalf of the least articulate, most isolated, and most seriously exploited groups.

Strikes in the public service, it is remarked, have been "relatively short-lived, sporadic, and local in effect" (p. 115). Unless employee attitudes change, prohibitory legislation is unnecessary. And such a change "may be better prevented than cured" (p. 117). The question of prohibitions can best be answered, argues the report, "when the problems of collective dealing through machinery for appeals and consultation have been solved in practice" (p. 120). Meanwhile administrators can rely upon the loyalty and self-restraint generally shown by the public employee groups and now deepened by war.

Employee participation can make positive contributions both in the adjustment of disputes through the application and interpretation of personnel policies and also in the formulation of the policies themselves. The reader, sensitive always to the particular experience that gives confidence to the analysis, notes with interest that "the Tennessee Valley Authority wage conference procedure shows a tendency to develop into a comprehensive plan for cooperative formulation of all types of rules affecting trades and labor personnel" (p. 141). But the report takes account of a lively debate over the range and the form of negotiation and agreement in public employment. On this question its conclusion is cautious. Numerous types of understanding exist. Some are almost indistinguishable from agreements that attend collective bargaining in private enterprise; this condition is especially likely in types of activities that parallel those of private enterprise.

In the absence of explicit statutory authorization (as in the enabling statute for municipal utilities passed by Washington in 1935), "the legality of contracts between governmental authorities and employee organizations will have to be settled, for the most part, in specific situations" (p. 171). Here it is appropriate to add that the indefinite adjournment of New York City's suit for a declaratory judgment in its dispute with the Transport Workers Union has avoided what might have been a judicial resolution of some questions about the scope of negotiation. But, without assuming a general legal disability on the part of public bodies to enter into collective agreements, the present report concludes that employee organizations

> . . . . are at present apparently satisfied with exchanges of correspondence and unilateral statements of policy on the part of administrative officials as the means of enunciating agreements on general conditions of employment. The vehicle of the agreement appears to be regarded as far less important in the public service than the process by which joint conclusions are reached and the care which is taken to inform the entire staff of the substance of these conclusions, (pp. 223-24).

On the distinguishable question of the closed or union shop, it is observed that there is need for "exploration and appraisal as to their legality, their theoretical implications, and their results in practice in the few governmental services where they are in force" (p. 225). The empirical basis is hardly at hand for a conclusion about the desirability of the closed shop as a device in public employee relations. Thus far the question has been acute almost wholly where the union had been accustomed to closed shop dealings with private employers. From the long-run view, suggests the report, "the closed shop will remain an academic issue to the extent that open standards of employment are uniformly adhered to and the representative role of employee organizations is respected as a permanent policy" (p. 225).

The reader is interested that the report gives little attention to distinctions, real or imaginary, between employees under the entrepreneural and under the more customary activities of government. Somewhat ironically, two very different elements have urged lately either that the distinction does not exist or at least should not be stressed. The city of New York, in its dispute with the Transport Workers Union over the renewal of collective labor agreements,

denied that there was any force (save in the field of tort liability) in the supposed distinction between "proprietary" and "governmental" functions; the union, on the other hand, prepared to rest its argument in the courts largely on the distinction. On the other hand, the general unions of public employees, as evidenced in the stand of the State, County, and Municipal Workers of America in 1941, have been playing down the concept of difference. This is understandable. To rest the rights of organization and agreement on the notion of a workable demarcation between "proprietary" and "governmental" activities might imply a serious narrowing of these rights. The border line is too vague to permit judicial evolution of foundations for a realistic employment policy. But it does not follow that the conditions met in the governmental conduct of large industrial undertakings might not require distinctive treatment, as in the legislative extension of the regular labor relations acts. For such undertakings it might seem necessary not only to decentralize personnel management but also to assimilate the conditions of public and private employment under collective agreements common to both for certain areas of activity.

The present report is addressed primarily to public administrators. It outlines the tasks of an employee relations staff in personnel offices which are organic in management itself. On the latter point, without extended argument, the report makes no bones about its preference; it holds that "there is substantial support for the view that separate commissions do not seem best suited to promoting, as a staff function, the policy of jointly negotiated decisions affecting employees" (pp. 201-2). As a document addressed to public employers, the report is not called upon to discuss, with the emphasis that might otherwise be proper, the need in unions of public employees for a thoughtful adaptation and even profound reorientation of traditions sometimes drawn from the general labor movement. In such a reorientation it is not merely or mainly the future of unions in the public service that is at stake; the confidence of mankind in collective action through government is involved.

From the standpoint of management and public, the report says of the question whether unions are "dangerous" or "constructive": "Perhaps the most significant conclusion of this study of the activities of employee groups is that they may take either form, depending in great part on whether they are received by the administrator as disruptive forces or as normal participants in administration" (p. 213). In any case, for those who find portent even in the overwrought cliches of the "managerial revolution," elements of balance in an enlarging public service are worth the price of a good deal of annoyance.

Home Rule for Whom?

By Thomas H. Reed, Municipal Consultant

METROPOLITAN GOVERNMENT, by VICTOR JONES. University of Chicago Press, 1942. Pp. xxiv, 364. $4.00.

THE publication of a full-fledged book on metropolitan government in the United States is a distinct event. It is now twelve years since the National Municipal League published the only other comprehensive treatment of the subject.[1] Professor Jones' book is most timely for the very reason that there is no more metropolitan government to describe than there was in 1930. It is certainly time that we learned why nothing has been done about needs which were so clearly apparent a dozen years ago. It is to this subject that the author chiefly addresses himself.

The purely descriptive early chapters are somewhat disappointing. They fall a good deal short of a complete exposition of the origin, growth, and problems of metropolitan areas. For this the blame must fall in part on the extremely limited space which is allowed for the treatment of so large and complicated a subject, which the author has tried somewhat unsuccessfully to limit by confining his discussion

[1] Paul Studenski, *The Government of Metropolitan Areas in the United States* (1930).

to the seventeen largest metropolitan areas in the United States. For one thing, he apparently takes lying down the Census Bureau's definition of a metropolitan area, which is at best no more than a statistical tour de force and leads to practical absurdities if it is used as the basis for talk of governmental integration. It would take, for example, a far deeper passion for integration than this reviewer can claim to suggest making the San Francisco-Oakland-San Jose area a three-ring circus under one local government tent. The inhabitants of the San Francisco peninsula and of the East Bay cities have, local governmentally speaking, only one common interest—transportation—and that has been managed with spectacular success without scrambling local administration. There is not the slightest possibility that economy or efficiency could be promoted by uniting their police, fire, health, welfare, recreation, and school departments, or any of them. Natural obstacles like large arms of the sea hardly deter commuters or statisticians but they can very satisfactorily mark out areas of local self-government.

The author hits his stride, however, in his analysis of the proposed solutions for metropolitan disintegration and does his best work in three chapters on "Some Structural Aspects of Integration," "Some Fiscal Aspects of Integration," and "Integration and the Law." These chapters should be read by everyone who wishes to understand the underlying legal and financial obstacles which confront every effort at integration. In them the author pays his respects to the county which, it must be agreed, is the hardest nut the would-be integrator has to crack. He lays his finger squarely on the seat of the trouble in the dual and conflicting position of the county as a unit of local government and as an agent of the state. Consolidation has turned out not to be consolidation in Philadelphia because of the extremes to which complacent courts and politically minded legislatures have carried this distinction. Consolidation has not taken place in an untold number of situations which call for it because of the reluctance of legislators to subordinate traditional county organization in a general municipal scheme.

Mr. Jones is perhaps a little too unwilling to grant a reasonable basis for the attitude of the state toward the county. So long as the states lived largely off the general property tax it was vitally important to them to control the machinery for the assessment and collection of that tax. In most states this motive is no longer important, but the state's interest in two other matters—elections and the administration of justice—remains paramount. It seems to this reviewer that the quickest way to clear up the muddy thinking of our lawmakers on consolidation is to invite them to separate the administration of justice and elections from local government altogether. By the same token, if legislatures continue to interfere in such matters in existing consolidations, reformers should not get unduly excited about it, certainly not to the extent of creating the impression that consolidation is not worth while because it does not keep the legislative fingers out of this portion of the pie.

The remainder of the book is given over to what the author calls "The Politics of Integration." Here is his most original and also his most controversial work. Taking the subject first from the point of view of the central city, second of the suburbs, and third of the state at large, he attempts to show from the records of actual campaigning for metropolitan consolidation the alignment of forces and choice of methods which have resulted uniformly in defeat. Professor Jones, moreover, is no man to pull his punches. He distributes blame for this result pretty broadly over business, labor, civic organizations, suburban residents, and local and upstate politicians. He counts as one of the chief reasons for failure the apparent inability of the proponents of integration to develop symbols as emotively powerful as "local self-government," "home rule," "dictatorship," and "corrupt city," which its opponents have used so effectively. The result is nearly one hundred intensely interesting pages. They are, however, journalistic rather than scientific.

Professor Jones' effort has been ambitious, his labor tremendous, and the result stimulating, but his procedure has been too helter-skelter, and his reliance on newspaper clippings too implicit to make his conclusions truly definitive. His arrangement is strictly topical. He divides the politics of integration not only into the three main parts (the central city, the suburbs, and the state) but into numerous subdivisions, dealing with business men, labor, politicians, organized officialdom, concessions,

and rural fears. The result is a confusing, incomplete, and sometimes conflicting distribution of material. For example, he very properly has devoted a good deal of space to Pittsburgh but without producing a coherent picture of what occurred and why in the struggle over integration from 1911 to 1935. He apparently used under each heading such miscellaneous news items as served to enforce his immediate point without regard to the items used elsewhere. The consequences of this haphazard procedure have been heightened by a tendency to jump to conclusions on insufficient evidence.

Thus he makes the statement on page 293 that the lukewarm and dilatory action of the Republican organization in the Pittsburgh charter campaign of 1929 made it "too late . . . for other groups to organize a campaign that would be effective." A footnote follow-up on the same page declares, "it is evident that an energetic campaign would have been effective despite the fact that the constitution required for adoption a two-thirds vote in each of a majority of the one hundred and twenty-two municipalities in the county." If the author had checked with his own footnote on p. 251 referring to the charge that the traction utilities had contributed several hundred thousand dollars to finance the Pittsburgh charter campaign, he would have been warned of something amiss with the idea that the campaign was not a vigorous one.

The charge against the traction utilities was not literally true, but the work of the so-called Metropolitan Plan Commission, especially for two campaign periods (in 1928 for the adoption of the enabling constitutional amendment and in 1929 for the charter itself) was liberally financed by the Mellon interests, which represented pretty nearly the whole business leadership of Pittsburgh. A continuing campaign of education was carried on from February, 1928, to June, 1929. An able publicity staff was set up. An energetic and experienced organization secretary presided over batteries of telephones and regiments of desks in directing the efforts of hundreds of cooperating individuals and organizations. Scores of speakers were trained and routed month after month into all four corners of Allegheny County in person and by radio. Tons of literature were printed and distributed. In fact, no charter campaign in the history of the country has ever been conducted on a scale so extensive either in point of time, or effort, or financial support, as the metropolitan plan campaign in Pittsburgh, quite apart from the work done by the Republican and Democratic organizations, both of which opened headquarters.

Mr. Jones is right that the politicians administered the "kiss of death" to the metropolitan plan charter. This disingenuous embrace was administered in Harrisburg when the legislature emasculated the commission's charter, leaving only a formal and sterile consolidation. This dehydrated document was accepted by the men and women who desired integration because it would put a foot in a door previously closed to all improvement. The nonpartisan effort made for it was, in spite of disappointment and the lukewarm aid of the party organizations, nothing short of heroic. There is no such thing as a more energetic campaign than the Metropolitan Plan Commission's own campaign for the charter. It won a smashing popular endorsement for integration and only lost because the constitution established an impossible method of ratification.

The fact is that there is no political party or citizens' movement which can guarantee a two-thirds or even simple majority in suburban municipalities for any form of real metropolitan consolidation. The attitudes of the suburban population on this point are determined by very obvious motives of self-interest. Their viewpoint may be narrow or distorted by sentiment or the echoing of shibboleths, but it is based on a not irrational satisfaction with the results of local government as they have it. There is no doubt that the majority of the inhabitants of reasonably well-governed suburban municipalities so far always have preferred to remain as they are. The relative success attained in the suburban units by the Pittsburgh movement in 1929 was due almost altogether to the facts that the concessions made to integration were slight and that with the charter once adopted the suburban units got a constitutional guarantee against their outright forcible annexation to Pittsburgh by legislative act, which they had been fighting since 1911. In this way Professor Jones' "home-rule" symbol was given an effective reverse application.

An actual frontal assault on the suburban citadels of local self-government is going to in-

volve a lot more than an exercise in semantics. We are confronted by the stubborn fact that the suburban communities never will surrender their independence or any substantial part of it except under the compulsion of *force majeure,* presumably either law or economic necessity.

So far the latter seems unlikely. It is the central cities whose financial situation is growing worse daily. It is they who are suffering from the outward movement of population. It is the base of their chief revenue reliance, the real estate tax, which is being eaten away by the corroding effects of blight. It is the cost of operation of the central cities which remains high while tax revenues decline, because they must continue to service their *emigrés* now paying taxes to suburban municipalities.

The suburban communities, on the other hand, are experiencing the advantages of increasing population and rising assessed valuations while continuing to chisel some costly services from their central cities—scientific police work, police radio, stand-by fire protection, markets, food and meat inspection, parks, airports, harbors. The more intensely integration comes to be needed as a means of equalizing the burdens between city and suburbs, the less advantageous consolidation becomes to the suburbanites.

It is true, as Mr. Jones points out, that the central cities themselves have not been strongly united behind demands for metropolitan consolidation. The prominence given to census rating as an argument for consolidation is due to the fact that it is an argument—whatever its value—which appeals generally to all classes in the community. It can be said, however, for central-city enthusiasm for integration, that these cities universally have voted favorably on such proposals as have been submitted to them, and that their politicians have been obliged to be *sub rosa* in their personal opposition to changes which threaten their hold. Furthermore, the stronger the proposed consolidation, the more central-city enthusiasm has been aroused. As central cities suffer more and more from the effects of the outward movement of population, it should be possible to secure a firm front for real integration.

How far should consolidationists go in sweetening the pill by making concessions to the particularist attitudes of the suburbanites? It is safe to say that the Pittsburgh charter, if adopted after the mayhem committed on it in the legislature, would have meant in itself absolutely nothing to the improvement of local government in the Pittsburgh area. The only advantage it offered was the possibility that it would be easier to enlarge the powers of the metropolitan government by amendment than to adopt a brand new scheme. The constitutional amendment defeated in Missouri in 1930, the original draft of which was prepared by this reviewer, was so entangled with provisions for the safeguarding of the liberties of Webster Groves and University City as to be almost worthless as a basis for metropolitan consolidation. The Cuyahoga County charter of 1935 was reduced to a mere shadow of a reform in the vain hope of winning suburban support and avoiding four-way ratification.

The reviewer has been forced by sad experience to the conclusion that compromises of this sort only clutter up the road to final victory. For many years he was a convinced advocate of the so-called federal or borough plan of consolidation. He is now convinced that such consolidations as were contemplated in Pittsburgh and St. Louis, while providing for better service in some fields, would have failed at one vital point. They would not have reduced the total cost of local government. They even might have increased it. They could have been made feasible financially only by combining the numerous units, many of which were of microscopic proportions, into a few boroughs of considerable size. This, of course, would have been even more distasteful to the civic patriots of Sewickly or Clayton than outright annexation. If we cannot offer to the central city and the suburbs better services and reduced over-all costs, we will spend our winter evenings thinking up new slogans in vain. The only way to get a first-rate selling point for integration is to suggest it in a form which will give the public more for its money, not less. In the pressure of federal taxation, the threat of financial collapse of the central cities, and the necessity for extensive local public works in the post-war period, there may be an appealing argument for metropolitan integration as an indispensable means of marshalling the whole economic strength of the metropolis to meet the unprecedented demands which a world in remaking imposes upon it.

This conclusion rests on the old theory that government reforms are not adopted for abstract reasons but to correct abuses that have become intolerable. The public is not interested in any abstract simplification of the areas of local government. It remains unimpressed when Professor Jones joins the chorus of exclaimers, of which this reviewer long has been a member, over the number of units in the New York or Chicago metropolitan areas. The public is really concerned with administrative organization only when that organization gets bad enough to hurt not the political scientists but the public itself in some tangible way. The plight of the North Shore municipalities which operate their own Lake Michigan-supplied water systems has been worrying tenderhearted students of local government for a generation. Unfortunately, as far as metropolitan integration is concerned, the health of these communities remains reasonably good and their water-rates not intolerably high. It is perfectly easy to build up a convincing case, to which almost everybody will say, "Yes! Yes!," for the need of integration on the basis of what may happen. It is likely that nothing will be done about it until something does happen. That is why the impending crisis in local affairs resulting from the undermining of the fiscal soundness of the central cities may be a blessing in disguise.

It is to be regretted that we ever fell into the way of submitting questions of annexation or consolidation to popular vote in the units affected. There never was a worse example of making men judges in their own causes. Few are so public spirited as to be willing to write their own death sentences. The interests of the few are thus most undemocratically allowed to contradict the interests of the many. It is probable we will make no substantial progress in metropolitan integration until we have either given the people of the area as a whole power to determine its internal organization or have substituted a judicial for the political process of settling questions of area and jurisdiction too hot for the legislature to handle directly. This reviewer is a frank admirer of the Virginia system by which annexation is determined by a three-man court—a local judge and two judges from other parts of the state, assigned by the Supreme Court of Appeals. It means a decision on the merits of the case and it is not loaded against consolidation.

Metropolitan Government is to be recommended to the consideration of all who are interested officially or civically in that problem. You do not have to agree with it to profit by your reactions to it.

Contemporary Topics

Manpower Mobilization

A WAR MANPOWER COMMISSION was set up by executive order within the Office for Emergency Management in April, and its chairman was given broad powers to formulate and put into effect a comprehensive manpower program.

Paul V. McNutt, administrator of the Federal Security Agency and director of the Office of Defense Health and Welfare Services, was made chairman of the Commission with power to act after consultation with its other members. He was instructed by the executive order to formulate plans and programs for the mobilization of manpower; to direct the departments and agencies of the government as to the proper allocation of available manpower; to prescribe regulations governing federal programs of recruitment, training, and placement of industrial and agricultural workers; and to prescribe basic policies governing the filling of the federal government's requirements for civilian personnel.

The chairman of the Commission was also directed to "formulate legislative programs designed to facilitate the most effective mobilization and utilization of the manpower of the country."

The chairman of the Commission was given power to prescribe policies and administrative regulations and standards with regard to the functions of all federal agencies relating to recruitment or utilization of manpower. The order transferred to the Commission the National Roster of Scientific and Specialized Personnel and the labor supply function of the Labor Division of the War Production Board. It transferred to the Federal Security Agency the apprenticeship section of the Division of Labor Standards of the Department of Labor and the training functions of the Labor Division of the War Production Board.

Other members of the War Manpower Commission are to represent the departments of War, Navy, Agriculture, and Labor; the War Production Board; the Labor Production Division of the WPB; the Selective Service System; and the U.S. Civil Service Commission.

Government Personnel

A SERIES of executive orders has paved the way for important and far-reaching changes in the procedures of the United States Civil Service Commission for selection, certification, and transfer. The objective of the orders is threefold: to attain maximum speed in filling war positions, to permit the Civil Service Commission to utilize "its resources solely for purposes of rendering the maximum of service to the war agencies," and to concentrate recruitment in the hands of the Civil Service Commission and "eliminate all duplication of recruiting activities."

One of the executive orders authorized the Director of the Budget to establish "priority classifications" of the various executive departments in respect to their relative importance to the war program, the priorities controlling transfers under provisions of the order. The Civil Service Commission was authorized to secure information about government employees who are competent to perform essential war work in departments or agencies having a higher priority classification and, with the consent of the employees concerned, to transfer them to meet personnel needs of such departments or agencies.

The plan as announced by the Director of the Budget classifies agencies in five groups of descending order of importance to the war. In Class I, with the right to valuable employees from all other agencies, are the Navy Department, Selective Service System, Maritime Commission, War Production Board, War Shipping Board, Lend-Lease section of the Surplus Marketing Administration, Procurement Division, White House Offices, the departmental and military activities of the War Department, and the Panama Canal and Alaska Communications System.

"War Service Appointments" were instituted in an executive order authorizing the Civil Service Commission to adopt and prescribe special procedures and regulations for the recruitment, placement, and change in status of personnel for all departments, independent es-

tablishments, and other federal agencies, except positions in the field offices of the postal service. The order provides that all persons appointed under any "special" procedures adopted as a result of the order will not acquire classified status and will henceforth be known as "War Service Appointments," extending for the duration of the war and for six months thereafter. The order will not affect the status of persons already occupying positions in the classified service.

The war service appointments plan does not mean that the Commission will assume the total operating load as far as recruitment and placement are concerned. It does mean that the resources of the Commission and the resources of the various agencies will be pooled and will be operated under an over-all plan developed by the Commission.

The executive orders bringing about the priorities classification and war service appointments clear the decks for an aggressive personnel recruitment and placement program —a step considered necessary in view of the unprecedented personnel demands that have developed during the last two years. The Civil Service Commission estimated that 150,000 federal employees were placed in January, 1942, or more than the total for 1940.

The Secretary of Agriculture in March instructed agricultural war boards in states and counties to cooperate with the United States Employment Service in setting up machinery for the mobilization of manpower and woman power for the farms and to advise on the housing and transporting of farm workers. The Secretary said that the Employment Service had agreed to increase the number of permanent and temporary employment offices in rural communities. In agricultural counties without permanent offices of the Service, voluntary representatives of the Employment Service will be appointed; in agricultural counties with heavy production, voluntary representatives will also be designated in each community.

The proposed organization will make plans for these undertakings: registration of all unemployed farm workers and members of farm families unemployed and available for work, use of qualified persons employed by the WPA and the NYA, registration of all school youths available for farm work, registration of all women available for farm work, use during peak seasonal operations of town dwellers regularly employed in other occupations, exchange between farmers of the labor of themselves and their families, provision of local living facilities for migratory labor from which they may be dispatched to particular jobs, and the transportation of workers to and from work.

A program for training one hundred junior administrators for replacement of others called into military service has been submitted to the Civil Service Commission by a special committee. Participants in the program, which would cover two to three years, would be selected partly from persons on the junior professional assistant eligible list and partly from persons now in the federal service who show promise of administrative skill. The purpose of the program would be to develop administrative ability through a combination of study, actual work in federal agencies and departments, and varied tests to determine progress. The responsibility for organizing, staffing, and operating the program would be under the Commission. Four groups of twenty-five candidates would be selected during the coming year, with a one-month interval between the selection of each group. Persons on the junior professional assistant list would be assigned to departments through selective certification, taking into consideration the candidate's relative standing on the eligible list, his relative standing on the general intelligence test, his capacity for leadership, and his standing in a special interview. The mechanics of the program include an intensive orientation period in the Civil Service Commission and a combined work-study program in various departments and agencies. There also would be a series of rotating assignments in federal agencies with periodic tests to determine the development of administrative ability.

National Housing Agency Established

THE executive order establishing the National Housing Agency in February consolidated the various housing activities of the government formerly carried on by some sixteen different agencies. In the National Housing Agency and under its administrator, John B. Blandford, Jr., all federal housing activity will be grouped into three principal constituent

units, the Federal Housing Administration, the Federal Home Loan Bank Administration, and the Federal Public Housing Authority.

The Federal Public Housing Authority is an amalgamation of all the various agencies and personnel engaged in constructing housing with public money. Herbert Emmerich, formerly executive secretary of the War Production Board, was appointed by the President as commissioner of the new Authority.

The Federal Housing Administration is continued without change in name, with its existing function of guaranteeing or insuring mortgages on homes. Abner Ferguson continues to serve as its head with the title of commissioner.

The Federal Home Loan Bank Administration includes all the functions of the Federal Home Loan Bank System, the Home Owners' Loan Corporation, and the other agencies formerly under the Federal Home Loan Bank Board. John Fahey, formerly chairman of the Federal Home Loan Bank Board, was made commissioner of the FHLA, but the Board was abolished.

The official announcement of the creation of the new agency emphasized that its administrator would direct in general the activities of the three subordinate units with full power to develop a unified comprehensive program. In the new agency were to be concentrated the functions of research in housing construction, materials, and methods, and of general urban development planning insofar as housing and its related facilities were concerned.

The order abolished the Division of Defense Housing Coordination and the Central Housing Committee. The Division had been set up to determine the needs for housing in the defense areas and to apportion responsibility for its provision among the various federal agencies. The Committee was originally created in 1935 with informal presidential authorization for the discussion of major housing policies, and its subcommittees were set up to provide channels for the discussion of technical and procedural matters by staff members of the agencies concerned.

Plans were made for the National Housing Agency to establish regional offices, most of them in cities serving as headquarters for War Production Board regional offices. Preliminary plans of the Federal Public Housing Authority were to base its regional system on most of the same headquarters cities.

The War Production Board, by stringently limiting the amount of critical materials to be allocated for construction of a house, led several cities to undertake revision of their building and plumbing codes. Specific proposals to this end were drafted by the American Municipal Association in collaboration with the War Production Board and federal housing officials. In April, however, the WPB completely prohibited the construction of any new residences of substantial size, except houses needed for war production workers or other war purposes. The Federal Housing Administration was made responsible for handling applications for building permits under the new order, which cut off the construction of virtually all private housing except in the certified defense areas, for which FHA Title VI loans are available.

The Housing Priorities Branch of the WPB, after the general prohibition of new construction projects except those specially authorized, requested municipalities which require building permits to withhold such permits from applicants that cannot present either certificates authorizing them to begin construction or project preference rating orders.

Rent Control

FEDERAL control of rents, previously on a semi-voluntary basis, received statutory support with the enactment of rent control provisions in the Emergency Price Control Act of 1942. This act authorizes stabilization of rents within any area where defense activities have resulted or threaten to result in rent increases, when state and local efforts to control rents are ineffective.

Under the act the administrator of the Office of Price Administration may first recommend the stabilization or reduction of rents in specified areas, and he may establish maximum rents if his recommendations are not carried out within sixty days by state, local, or other regulations. The maximum rent provided by the administrator may be lower than rents prevailing at the time of the regulation. The administrator may, in addition, regulate or prohibit speculative or manipulative practices, or renting or leasing practices in connection with defense area accommodations which may result in rent increases.

Shortly after the Emergency Price Control Act went into effect, Virginia became the first state to establish rent control by statute. In signing the bill the governor, authorized to set up rent control boards, said he would give prompt attention to the Hampton Roads area where landlords have been charged with raising rents apparently in the hope of meeting anticipated reductions.

Baltimore's new ordinance making necessary a 120-day instead of a 30-day eviction notice was adopted to keep low-income families from being forced to move because their landlords see an opportunity to obtain higher rents from war industry workers. Applying to dwellings renting for a maximum of $10 a week, the delayed-eviction law gives an opportunity for the state defense council's fair rent committee to examine disputes between landlords and tenants and to avoid eviction or excessive rents by working out some mutually satisfactory agreement.

The 30-day notice to vacate still holds if the tenant is violating an obligation of his tenancy; if the landlord needs the dwelling for himself and family; if he has contracted to sell the property to a buyer who intends to occupy it; or if the dwelling is to be demolished and replaced by a new building.

War Production Board Reorganization

THE War Production Board announced in March the reorganization of its Bureau of Industry Operations and the establishment therein of twenty-four industry branches, each of which was charged with responsibility for effecting "the maximum use of existing industrial capacity for production of war material and products for essential civilian use."

Under this plan the Bureau of Industry Operations becomes more clearly the principal operating part of the War Production Board, and its branches are the official points of contact between the Board and representatives of industries concerned.

The WPB has devised a new plan called the "production requirements plan" for assigning preference ratings in the priorities system. This plan sums up at a single application all the materials needed by a producer over a three-months' period, granting one or more preference ratings for continued deliveries including repair, maintenance, and operating supplies. Under the plan, each manufacturer has a rating good for three months for the materials named. The plan requires full information on each application regarding the kind of materials needed, the amount on hand, and the importance of their use to the war effort. Thus it enables WPB to give every industry concerned uniform treatment.

Civilian Defense

THE Office of Civilian Defense was given more effective liaison with other federal agencies and with state and local governments, and its functions were broadened and redefined, by an executive order issued April 15.

A Civilian Defense Board was set up to advise and assist the director of the OCD, who was named chairman of the Board. Ex officio members are the Secretary of War, the Attorney General, the Secretary of the Navy, and the director of the Office of Defense Health and Welfare Services. The President also appointed to the Board Earl D. Mallery, executive director of the American Municipal Association; Maurice J. Tobin, Mayor of Boston; Harold E. Stassen, Governor of Minnesota; and Norman H. Davis, chairman of the American Red Cross.

The director of the OCD was instructed by the order to keep informed of problems which arise in states and communities from the impact of industrial and military efforts required by war and to take steps to secure the cooperation of appropriate federal agencies in dealing with such problems. To this end the OCD was instructed to suggest plans to mobilize the maximum civilian effort in the prosecution of the war and to help other federal agencies in their war programs by mobilizing the services of the civilian population and by aiding state and local defense councils in the organization of volunteer service units. The OCD retains the functions of sponsoring and carrying out programs for the protection of life and property against war hazards.

Civilian defense councils existed in approximately one-half of the nation's cities in February, according to an unofficial survey. Most of them were functioning in advisory and consultative capacities, leaving execution of the local defense programs to the regular executives.

Among the larger cities, Los Angeles had a director, six full-time employees, and eight full-time volunteers, while Detroit had a director and fourteen full-time employees.

The OCD was proceeding in April to sponsor a total of seven War Department Civilian Defense Schools, patterned after the Chemical Warfare Service School which has been conducted at Edgewood Arsenal since last summer. The seven schools will be located at various universities throughout the country, and the OCD regional offices will assign quotas of students to the states. The schools will provide training in technical subjects for firemen, police, and others qualified to serve as instructors for civilian defense training programs.

New York War Councils

AN ACT to strengthen the authority of state and local war councils and to set up a strong, well-coordinated civilian protection system throughout the state has been enacted by the New York legislature.

The State War Council, which includes as ex officio members administrative and legislative leaders, is instructed to make surveys and draft programs on every aspect of civilian administration relating to the war effort, to enlist the help of any "agency or official of the state or any political subdivision thereof" to carry out its work, to recommend any legislation necessary for its program, and to suspend or remove members of local war councils for neglect of duty or "wilful failure to comply with an order or rule of the state council."

The State War Council is to administer the civilian protection aspects of its work through a state office of civilian protection and to appoint as the head of that office a state director of civilian protection. That official will make plans for the protection and evacuation of civilian population in case of attack, coordinate the activities of local offices of civilian protection, and, during attack, direct the transfer of municipal or volunteer agencies between two or more local offices.

Each county and each city is directed to set up a war council. The mayor appoints the members of the city war council; the chairman of the board of supervisors appoints the members of the county war council. The civilian protection functions of the local war council are administered by the director of civilian protection of the county or city. In each city the mayor may either appoint a director or fill the position himself, but, except in a few counties with chief executive officers, the chairman of the county board of supervisors must appoint a full-time paid director of civilian protection.

In addition to civilian protection, the state and local war councils will supervise the administration of the rationing system and the execution of all plans for the mobilization and efficient use of the resources and facilities of the state and its communities in the war effort.

State Legislation

TEN proposed statutes intended to enable states and municipalities to cooperate more effectively in the war effort have been drafted for submission to state legislatures by representatives of state governments and have been revised and improved with the assistance of the federal agencies concerned.

The proposed legislation, which is accompanied by suggestions for supplementary administrative action, was drafted by a special committee of the Council of State Governments with the cooperation of the Special Defense Unit of the Department of Justice. Many of the proposals were drafted in collaboration with the Office of Civilian Defense, the War Department, and other federal agencies, and their clearance through federal channels was expedited by the Office of Government Reports.

The bill of most general administrative importance is the one entitled "State Emergency War Powers," giving extraordinary authority to the governor during a war emergency. Others deal with air-raid precautions, mobilization for fire defense, military traffic control, emergency health and sanitation areas, the acceptance of federal grants, defense public works, defense housing, zoning for defense areas, rent control, and authorization for the sale of war savings bonds.

State and federal officials who cooperated in the drafting unanimously adopted the following statement of policy: "That state legislation should, as far as possible, provide that no regulation or rule should be made locally inconsistent with federal policy, and that the governor, or council of defense, or an appropriate body or director of civilian protection may adopt, proclaim, and enforce regulations, rules and orders not inconsistent with regulations, rules

or orders of the President of the United States or the War Department or the Navy Department or the United States Director of Civilian Defense, and shall take measures to carry into effect any rule, regulation, order, or request of the President of the United States or the Secretary of War or of the Navy, or the United States Director of Civilian Defense for action necessary to national defense or safety of life and property."

The Bureau of Mines of the Department of the Interior is clearing with state governments through the Council of State Governments proposed regulations for the control of explosives under state laws and the Federal Explosives Act. The act specifically directs that "wherever possible the director shall select as licensing agents qualified officers or employees of the several states or of political subdivisions or public bodies thereof." County clerks have generally been designated as licensed agents under this provision. Plans are being worked out for a system for the exchange of information between state and federal enforcement officials for the control of explosives.

Civilian Protection Supplies

THE War Production Board has approved the purchase and allocation by the Office of Civilian Defense of pumper trailer units for use by auxiliary fire fighting corps. Under WPB restrictions the trailers cannot have rubber tires and must be constructed of wood with metal reinforcements. This instance illustrates the way in which the Office of Civilian Defense, in administering its allocations of equipment and supplies to local governments, has had to conform to the national system of priorities and production management. The equipment to be alloted by the OCD is to be on loan only, and the OCD will keep account of property on loan through specially appointed state and local property officers.

The OCD will allocate supplies such as fire fighting equipment to those communities most in need of them on certification that the communities need but are unable to provide the property in question. It is understood that the community able to pay for supplies but unable to obtain them because of priority regulations may get them on loan. The OCD may deliver the equipment and supplies direct to the communities in question or through the state authorities.

The governor in any state in which a community is to receive civilian protection supplies from the OCD must first appoint a state property officer to receive property from the OCD, to distribute it to communities, and to record and be accountable for all such property within his area. Each local government receiving property on loan similarly appoints a local property officer to receive the loan upon the terms and conditions prescribed by the OCD. In "special areas" designated by the OCD, presumably metropolitan areas, an area property officer will be designated by the governor of the state which includes the largest city in the area.

Civilian Identification Program

AN IDENTIFICATION program which eventually will cover more than 300,000 Chicago civilian defense workers has been launched. The first step was completed recently with the training of 224 volunteer fingerprint technicians—two each for Chicago's 112 community identification units. Other members of the units now are being trained in other steps in the identification program. When this is finished the actual program will get under way.

Approximately 20,000 block captains will be identified first, then their air-raid, sanitation, utilities, and other wardens. By summer all civilian defense workers will be able to produce photostated identification cards containing their photographs and other descriptive information.

The job of instructing fingerprint technicians was performed as a volunteer service by employees of the Chicago Park District, which recently completed identification of its 4,000 employees, in cooperation with the Metropolitan (Chicago) Defense Area.

While the fingerprint technicians were under instruction, Park District volunteers aided civilian defense officials in preparing a manual describing a standard identification process in detail. The manual will be used in training the eight other members of the unit identification staff—a supervisor, two typists, two recording clerks, one "weight and height" clerk, and two clerks to "paste up" identification pictures on cards for photostating.

Unit supervisors already are studying the

manual so they can instruct members of their staffs as to procedures. When the instruction period is finished block captains, then their helpers, will be notified to appear and supply information for their identification cards, including their photographs. Arrangements have been made for defense workers to obtain standard-size photographs at a low cost.

When the defense worker appears for identification, fingerprints of both hands are taken on special cards supplied by the FBI, which later checks the cards to determine whether he has a criminal record. All other essential information is recorded on another identification card, the photograph is pasted on the card, and the whole photostated. Photostating is done by volunteers of a city department which has two photostating cameras.

The identification card returned to civilian defense workers will be 2½ x 4 inches—billfold size. Identification cards will not be given to civilian defense workers, however, until they have completed basic training courses in their particular field of participation.

Joint Municipal Airports

FIVE cities and two counties are involved in the most recent plans for intermunicipal and intergovernmental operation of airports. One of the few airports operated jointly by four units of government now is under construction midway between Raleigh and Durham, North Carolina. The airport, financed partly with federal funds, will be owned and maintained by the two cities and their counties, Wake and Durham, under a 1938 enabling act authorizing a "Joint Airport Authority." The authority is a four-man board with one representative from each of the counties and cities. It has supervisory, regulatory, and operating powers.

The other airport, to be built by army engineers under supervision of the Civil Aeronautics Authority, will result from cooperation among three Michigan cities—Saginaw, Bay City, and Midland. The joint project was suggested by the CAA when the three cities requested state aid on individual airports. Each city passed an ordinance under a state enabling act permitting participation in the project. A commission of three members—one from each city—will operate the airport.

Construction of the two airports will bring to forty-three the number of airports operated jointly by two or more municipalities or governmental jurisdictions.

Intermunicipal Fire Protection

MUNICIPALITIES are extending fire protection to neighboring communities by two principal types of arrangements, the development of which accompanied the recent trend in state legislation allowing local fire departments to operate apparatus anywhere within the state or even across state borders.

The arrangement used most extensively among thirty cities and in twenty-one states covered by a recent survey provides for "outside" fire service by one governmental unit to nearby cities and villages. State enabling legislation making this possible usually restricts it to adjacent communities or those within the same county.

The other arrangement involves operation of mutual aid plans of the type common in Great Britain since the start of the war. Under this plan, legal in only five of the twenty-one states covered by the survey, cities participating agree to help one another in time of disaster with fire fighting equipment and manpower.

Fifteen of the thirty cities render outside service of an emergency nature only, with no prearranged understanding. Four of them—Buffalo, Chicago, San Francisco, and Washington, D. C.—have formally provided by fire department regulations, ordinances, or city charters that apparatus may be sent outside, but no actual working arrangements have been made with surrounding municipalities.

Only five of the thirty cities are members of mutual aid plans, outstanding of which are those of Boston and the Westchester County area in New York. Under the Boston plan, nearly thirty cities are interconnected by fire alarm systems, affording protection for 1,750,000 persons. Forty-four of the fifty-six fire protection districts in Westchester County are included under the mutual aid plan there.

Canadian Tax Plan

CANADIAN provinces, under arrangements tentatively or finally approved by all of them, have vacated the personal income and corporate tax fields for the duration of the war.

As reimbursement for their action they will receive approximately $81,000,000 a year from the Dominion government, which is taking over these two types of taxes.

In addition the Dominion government will pay fiscal need subsidies totaling $3,500,000 to five of the provinces and will make up to all the provinces any decrease, using 1940 collections as a basis, in the annual gasoline tax collections. The Dominion government this year for the first time is imposing a gasoline tax.

Two reimbursement plans were offered the provinces under the arrangements, which will require formal legislative approval before becoming effective.

One plan, adopted by five of the provinces, gives them compensation from the Dominion treasury equal to the revenue they and their municipalities had collected from personal income and corporation taxes in the fiscal year ending nearest December 31, 1940. This plan was adopted by the provinces of Alberta, British Columbia, Manitoba, Ontario, and Quebec.

The alternative proposal was for the Dominion to pay an amount equal to the net debt service of the province during the year ending nearest December 31, 1940, less the revenue obtained from inheritance taxes in that fiscal period. This plan was adopted by New Brunswick, Nova Scotia, Prince Edward Island, and Saskatchewan.

Virginia Civil Service Act

THE state of Virginia will set up a new system of personnel administration on a merit system basis on June 1 under an act adopted by the 1942 legislature. The act places responsibility for personnel administration on the governor and his department heads. The governor, as chief personnel officer, may appoint a deputy personnel officer to be known as the director of personnel. Department heads are to be agency personnel officers, but they may delegate personnel duties to certain employees.

The governor, if he wishes, may appoint an advisory committee on personnel administration including among others members of the Virginia legislature. Members of the committee will receive no pay except travel expenses.

Nearly all of the state employees except those elected or appointed by the governor will be included in the merit system, and appointments will be made on a competitive basis. Department heads and agency personnel officers will keep departmental personnel records in addition to the central personnel records. The addition of Virginia brings to twenty the number of states operating under merit system laws.

State and Local Fiscal Data

TO OBTAIN an over-all picture of state and local taxation and expenditures in their relation to federal finances and to provide data by levels of government on taxes and other revenues, expenditures, and debt, the Bureau of the Census has launched another series of studies with the cooperation of state and local officials. In making its studies the Bureau of the Census is giving special attention to the compilation of finances in the field of state and local government which are required in connection with the nation's war effort and postwar planning.

Questionnaires are being sent to all states, to all large cities and counties, and to a representative sample of other cities, counties, and special districts, requesting financial statistics for 1941 on general property tax levies and collections, assessed valuations on which these levies were made, and also revenues from other sources, especially grants and public service enterprises. Instead of asking state and local fiscal officers for data on expenditures for 1941 it is planned to obtain figures for the major functional groups from the Social Security Board, the Office of Education, and the Public Roads Administration. The Office of Education is undertaking a special survey of its own to obtain the most recent data on school revenues and expenditures for state and local school districts.

New York Works Programs

New York State is creating a Temporary State Commission for Postwar Public Works Planning, one of the duties of which is to maintain liaison with the new federal Local Public Works Programming Office, according to a bill drafted in consultation with the governor and passed in April by both houses of the New York State legislature.

The bill provides that the Commission, with the assistance of other state agencies and municipalities, shall draft detailed plans for

postwar public works and keep a record of their scope, cost, and employment possibilities, and the materials and equipment needed for their execution. The Commission is to draw on a fund of $450,000 from the postwar planning capital reserve fund of the state treasury for the preparation of plans and specifications for certain types of state projects, the actual drafting of which it may assign either to the Department of Public Works or to private architectural or engineering firms. The plans for grade crossing eliminations, highways, parkways, buildings, and public housing projects are to be drafted by the appropriate state departments to which funds for detailed plans and specifications have been made available.

The members of the Commission are to be the director of the budget, the state superintendent of public works, the chairman of the State Council of Parks, the state commissioner of housing, the director of the State Bureau of Planning and the Division of Commerce, the chairmen of the ways and means committees of the legislature, and the chairman, vice-chairman, and counsel of the New York State Joint Legislative Committee on Industrial and Labor Conditions. The Commission is to continue in existence to July 1, 1943.

Army Reorganization

THE War Department was reorganized early in March to abolish a number of its major bureaus and to centralize control of Army operations under three commanding generals, one in charge of the Army ground forces; the second, of the Army air forces; and the third, of the services of supply.

At the same time, the number of members of the general staff was reduced, and about one-half of those remaining were chosen from the air staff.

In addition to the general staff and the three principal subdivisions of the Army, there will exist any number of commands and oversea departments as may be necessary in the interest of national security.

Other War Department agencies will be the Legislative Liaison Division, which is charged with supervising the preparation of legislation requested by the War Department and with the preparation of reports for committees of Congress, the Military Intelligence Service, the Bureau of Public Relations, and the Inspector General's Department.

The commanding general of the services of supply will report to the chief of staff on military matters, but on procurement and related matters he will continue to act under the direction of the Under Secretary of War.

Collection of War Records

AT THE request of the President a committee of administrators and scholars has been established to supervise the collection of current war administration records, so that present experience may be utilized during the war and in postwar administration.

The work will be directed by Pendleton Herring, secretary of the Graduate School of Public Administration, Harvard University, and the committee will include the archivist of the United States; the director of the Office of Facts and Figures; the director of the American Council of Learned Societies; and the presidents of the American Historical Association, the American Society for Public Administration, and the American Political Science Association.

"Stockpile" Control

AFTER the creation of the National Housing Agency and the transfer to it of the Federal Housing Administration and the Federal Home Loan Bank Board and its affiliated units, the remaining parts of the Federal Loan Agency, notably the Reconstruction Finance Corporation and the various corporations set up for the purchase of strategic materials, were transferred to the Department of Commerce. In April, however, the President transferred to the Board of Economic Warfare control of the "stockpile" program of the federal government. The President's order gave to the BEW the authority to set up its own corporations under the RFC Act for the acquisition of materials, supplies, and commodities. The BEW, however, had the power, and was expected, to conduct its stockpile purchases through the Defense Supplies Corporation and the other subsidiaries of the RFC, confining its own operations to the determination of general plans and policies.

News of the Society

THE fourth annual meeting of the American Society for Public Administration will be held in Chicago at the Stevens Hotel December 27 and 28. The conference will again be held jointly with the American Political Science Association. Clarence E. Ridley, executive director of the International City Managers' Association, has been appointed chairman of the program committee.

Chapter News

The Alabama Chapter held its spring meeting in Birmingham on March 20. Administrative problems of civilian defense were discussed by four speakers. Colonel B. F. Marshall, of the Atlanta Regional Office of the Office of Civilian Defense, presented problems dealing with regional organization; Houston Cole, executive director of the Alabama State Council of Civilian Defense, discussed problems of state administration; J. W. Heustess, secretary-treasurer of the Alabama Association of County Commissioners, discussed county organization; and F. P. Givhan, mayor of Montevallo, discussed small town organization. After the dinner meeting, Harry Hendon, president of the chapter and chief engineer for Jefferson County, talked on the "Administration of Civilian Defense in an Industrial Area."

The Sacramento Chapter held a meeting on April 16, at which Edwin A. Cottrell, head of the political science department at Stanford University, addressed the group.

The San Francisco Bay Area Chapter met on April 2 to hear a round table discussion on regional defense problems led by Joseph A. Murphy, deputy coordinator of the San Francisco Bay Regional Metropolitan Defense Council. Other members of the defense council who contributed to the discussion were: Leon Sloss, Jr., regional coordinator for evacuation; E. D. Barnett, coordinator for the protection of public health in the region; Chief William Meinheit, regional coordinator of fire protection; Samuel C. May, regional representative of the California State Council of Defense; and Robert Ward, executive secretary of the Regional Defense Council. E. A. Cottrell, president of the chapter, announced the nominating committee as Walter Sykes, assistant regional conservator, Soil Conservation Service, chairman; Philip Berger, secretary and chief examiner of the Alameda County Civil Service Commission; Von T. Ellsworth, director of the research department of the California Farm Bureau Federation; Mrs. Hazelle Drake Abbott, assistant chief clerk, Naval Air Station, Alameda; and Herbert Ormsby, director of the research department of the California State Chamber of Commerce.

In Connecticut a meeting was held in April and an Executive Organizing Committee was set up with Claude E. Taylor, assistant state budget director, as chairman, and as members, Russell H. Allen, executive secretary of the Hartford Housing Authority; Carter W. Atkins, director of the Governmental Research Institute; Joseph B. Downes, Connecticut state auditor; Robert L. Duffy, director of finance and budget for the city of Hartford; and Alonzo G. Grace, state commissioner of education.

The Chicago Chapter met on January 27. Albert Lepawsky, director, Institute of Public Service of the University of Chicago, presented an illustrated lecture with documentary films from the British Library of Information on the organization and administration of civilian defense systems as developed in Great Britain and as now developing in the United States. On February 24, Leonard D. White, professor of public administration at the University of Chicago, led a discussion on "Government Organization for War." On March 31, James M. Mitchell, director of the Civil Service Assembly, spoke to the chapter on "Recent Developments in Public Personnel Administration." On April 30, John C. Weigel, regional director of the Office of Price Administration, and Michael F. Mulcahy, rationing administrator of the Chicago Metropolitan Area, spoke on the objectives, program, and practices of price administration.

The Kansas Chapter held a meeting on March 12, at which John G. Stutz, director of the League of Kansas Municipalities, spoke

on "War Problems of Local Government Administration and Finance."

The spring meeting of the Minnesota Chapter was held on March 31. Morris B. Lambie, of the Littauer Graduate School of Public Administration, spoke on "The Role of Ethics in Public Administration." The newly elected president of the chapter is O. A. Pearson, superintendent of public relief in Minneapolis.

The New York Metropolitan Chapter met January 28 to hear David E. Lilienthal, chairman of the Tennessee Valley Authority, talk on "The Future of Public Management." On March 16, Luther Gulick, director of the Institute of Public Administration, spoke on the principles and practices of scientific public administration. His address was entitled "Some Sacred Cows of Administration in War Time."

The Philadelphia Organizing Committee held a luncheon meeting on March 12, attended by sixty-five persons. John B. Blandford, Jr., administrator, National Housing Agency, spoke on "The Role of the Bureau of the Budget in the Field of Administrative Management." Hardy L. Shirley, director of the Allegheny Forest Experiment Station and chairman of the Philadelphia Organizing Committee, presented a history of the Society.

The Utah Chapter met on January 15 to discuss how Salt Lake City could benefit by a current administrative survey. The panel consisted of Charles P. Schleicher, of the University of Utah; Gerald Irvine, assistant city attorney of Salt Lake City; Mark Anderson, former mayor of Provo; and William Wood, city commissioner of Ogden. On February 26, G. Homer Durham of Utah State Agriculture College, Gordon T. Hyde, chairman of the state finance commission, Gerald Beesley, state finance commissioner, and Thornton Peterson, WPA administrator, participated in a round table discussion on "The Place of the State Finance Commission in State Administration." At the meeting on April 2, the subject for discussion was "Civilian Defense Administration" under the leadership of Newell Pickett, Utah State Board of Health, and Joel Richards, Salt Lake Civilian Defense Council. On April 30, the chapter met to discuss "Administrative Public Relations" under the leadership of Dean Arthur L. Beeley, University of Utah School of Social Work; M. H. Harris, secretary of the Utah Taxpayers Association; Chester Olson, United States Department of Agriculture; and O. M. Malmquist, writer for the *Salt Lake Tribune*.

The Executive Committee of the Washington, D. C. Chapter accepted the affiliation of the Public Relations Consultants with the local chapter of the Society. On January 17 and 31, special luncheon meetings were held for junior members of the chapter. At the latter meeting the group was addressed by James Perkins, executive officer, Price Division, OPA. On January 20, a round table discussion was held on "Coordination of Defense Agencies in the Field." This was followed by another discussion on January 28, on "Public Relations in War Time" under the chairmanship of W. D. Boutwell, director of Information Service, Office of Education, Federal Security Agency. At a dinner meeting on January 21, Luther Gulick, director of the Institute of Public Administration, spoke on "Administrative Adjustment to Total War." Two round table discussions were sponsored jointly by the chapter and the Graduate School of the Department of Agriculture in February: one on "Budgeteering" under the chairmanship of Burton Hunter, United States Bureau of the Budget, and one on the topic "Can Personnel Administrators Meet the Test?" These round table discussions were carried over to two more meetings during the month of March. On March 12, Sir Gerald Campbell, director general of the British Information Service, spoke on the topic "The Evolution of the British Information Service." A discussion of "Objectives for the Budgeteer in Wartime" the last round table of the series on budget management, was held April 7. The sessions considered to what extent such traditional budgetary objectives as "economy," "integration," and "control" are legitimate objectives under war conditions. On April 30, the final session of the round table on personnel discussed "Paper Shuffling Versus Personnel Servicing," in an attempt to solve the problem of how personnel administration may be freed of its paper shackles in view of the shortage of time, paper, and stenographers.